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July 16, 2004

James J. McNulty, Secretary
PA Public Utility Commission
400 North Street
Keystone Building
Harrisburg, PA 17105-3265

RE: Investigation into Financial and
Collections Issues Regarding the
Philadelphia Gas Works
Docket Nos. P-00042090; R-00049157
M-00021612; P-00032061

Dear Secretary McNulty:

Enclosed for filing please find an original and nine (9) copies of the Office of
Consumer Advocate's Main Brief, in the above-referenced proceeding.

Copies have been served upon all parties of record as shown on the enclosed
Certificate of Service.

Sincerely,

Stephen J. Keene
Senior Assistant Consumer Advocate

Enclosures

cc: All Parties of Record
Honorable Charles E. Rainey, Jr. (via overnight mail)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

INVESTIGATION INTO FINANCIAL AND
COLLECTIONS ISSUES REGARDING THE
PHILADELPHIA GAS WORKS

:
:
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DOCKET NOS. P-00042090,
R-00049157, M-00021612
and P-00032061

OFFICE OF CONSUMER ADVOCATE'S
MAIN BRIEF

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I. INTRODUCTION

On June 2, 2004, the Pennsylvania Public Utility Commission (“Commission”) entered an Order consolidating two open proceedings involving the Philadelphia Gas Works (“PGW” or “Company”) into the above-captioned investigative proceeding. *Investigation into Financial and Collections Issues Regarding the Philadelphia Gas Works*, Docket Nos. P-00042090, R-00049157, M-0021612, and P-00032061 (Opinion and Order entered June 2, 2004)(“*June 2 Order*”). The first proceeding docketed at P-00042090/R-00049157 involves PGW’s 2004 annual gas cost rate (“GCR”) filing pursuant to Section 1307(f) of the Public Utility Code, in addition to the Company’s Petition seeking approval for a "cash receipts reconciliation clause" ("CRRC"). The second proceeding, at Docket Nos. M-00021612/P-00032061, involves PGW’s Petition seeking to implement a "means tested" Senior Citizen Discount (“SCD”) program as well as several issues pertaining to PGW’s compliance tariff filed in the Company’s Restructuring Proceeding. The *June 2 Order* also gave PGW until July 2 to petition for waivers of any Commission regulations that the Company believes impede its collection efforts. *June 2 Order* at 5. If the Company elected to file such a Petition, it was to be consolidated into this Investigative Proceeding. *Id.*

The Commission’s *June 2 Order* stated that the “Commission believes it necessary to take a comprehensive approach to PGW’s financial and collection problems” and therefore consolidated the SCD proceeding and the CRRC/GCR proceedings. *June 2 Order* at 4. The *June 2 Order* further required that the CRRC record be certified to the Commission to allow for a decision on the CRRC issue at the July 8 Public Meeting. *June 2 Order* at 6.

The parties have reached a Settlement of the GCR portion of this case and submitted a Joint Petition for Settlement of the GCR issues to Administrative Law Judge Rainey. The *June*

2 Order provides that ALJ Rainey will issue a separate Recommended Decision on the GCR issues in order to comply with the statutory deadline set forth in Section 1307(f). ALJ Rainey issued a Recommended Decision on June 29, 2004, recommending approval of the proposed GCR settlement. Therefore, it is expected that a final Order in the GCR proceeding will be issued prior to September 1, 2004.

The *June 2 Order* directed that the following issues are to be examined as part of the instant investigation:

- Adequacy, cost effectiveness and management of PGW's collection practices;
- Whether PGW is entitled to any requested waivers and/or modifications to the Commission's Chapter 56 regulations;
- The reasonableness of implementing a means-tested Senior Citizen Discount program;
- Tariff issues arising out of PGW's compliance filing in its restructuring proceeding at Docket No. M-00021612; and
- The level of PGW's universal service costs as well as the cost effectiveness, program designs and management of these programs.

The *June 2 Order* contemplated that the investigation into these issues was to be completed in time for the Commission to make its decision at the September 30, 2004 Public Meeting.

Thereafter, on June 16, 2004, PGW filed a Petition for Limited Waiver or Modification of Public Utility Commission Chapter 56 Rules and Administrative Interpretations ("Chapter 56 Waiver Petition"). In its Petition, PGW seeks to waive or modify several important provisions of the Commission's Chapter 56 regulations and administrative interpretations of those regulations. 52 Pa. Code § 56.1 *et seq.* ("Chapter 56"). These requests include modifications and

waivers of credit and deposit standards, and termination and collection procedures for residential customers.

The Company filed its Chapter 56 Waiver Petition in response to the Commission's *June 2 Order* into PGW's financial and collections practices. The *June 2 Order* provided that if the Company was going to seek any Chapter 56 waivers or modifications in light of its recent collection problems, that it would have to file a petition with the Commission within 30 days. *June 2 Order* at 4-5. The Commission also stated that "[i]n the event PGW files a waiver petition, it should propose the duration of the waiver, as well as an alternative standard or procedure that would apply in place of those contained in the regulations." *Id.* at 5 n.2. The *June 2 Order* further provided that PGW should "explain in such a petition how the alternative standard or procedure adequately balances consumer protection rights with PGW's financial integrity." *Id.* at 5 n.2.

Through its Chapter 56 Waiver Petition, PGW seeks to modify or waive Chapter 56 provisions that contain many important consumer protections. These Chapter 56 protections have evolved over the years and provide basic, fundamental protections to consumers to ensure that the health and safety of the public are not placed in jeopardy and that utilities are dealing fairly with consumers. Therefore, PGW should be held to a strict standard of proof before waivers of such important safeguards are granted.

PGW claims that the waivers it seeks are necessary in order for it to increase its collections rate. PGW claims that record high natural gas prices and consecutive colder than normal winters have harmed the Company's financial recovery that was expected as a result of recent Commission-approved rate increases. The Company claims these factors have increased its need for cash working capital requirements and reduced the Company's collections rate. Chapter 56 Waiver Petition at 2.

PGW has instituted a “Collections Initiative” with concentrated collections efforts by PGW employees that has resulted in improved collections. Chapter 56 Waiver Petition at 3. In addition to PGW’s efforts, the City of Philadelphia has announced a grant-back of the \$18 million City payment for up to five years. *Id.* This will provide PGW with a \$90 million injection of cash over a five-year period. PGW’s efforts, and the assistance from the City, place PGW in the position of having \$31 million to \$36 million of cash on hand at the end of the fiscal year – more cash on hand than at the end of any fiscal year since the Commission assumed jurisdiction over PGW. OCA CRRC M.B. at 12.

On July 9, 2004, the Commission entered an Order rejecting the proposed CRRC. *Petition of the Philadelphia Gas Works to Establish a Cash Receipts Reconciliation Clause*, Docket No. P-00042090 (Order entered July 9, 2004)(“*CRRC Order*”). In that Order, the Commission specifically found that PGW’s financial condition had improved since the time it filed the CRRC Petition and that PGW had failed to carry its burden of proof that its financial situation required such immediate and unique treatment. *CRRC Order* at 11, 24.

The OCA submits that much of PGW’s request for Chapter 56 waivers is premature. The OCA submits that the Collections Initiative and other avenues to improve collections should be pursued before waivers of important consumer safeguards, that provide key public health and safety protections, are obtained.

In general, the OCA opposes many of PGW’s requested Chapter 56 waivers as unnecessary and unsupported. PGW has failed to provide, or been unable to provide, necessary information to allow the Commission to credibly determine how these sweeping waiver requests balance consumer protections against PGW’s financial integrity. In spite of the extremely short period of time the parties had in which to conduct an investigation into these issues, and the limited

information available, the OCA has been able to identify several alternatives that PGW could incorporate into its collections practices that could improve PGW's collections and its cash flow. These alternatives include the use of Electronic Funds Transfers for making monthly payments on payment arrangements for customers with incomes at or above 250% of the federal poverty level, and implementation of mandatory budget billing for all residential customers. The OCA has also recommended that the Company pursue a credit scoring pilot program similar to that utilized by other Pennsylvania utilities to better identify customers that are at risk for non-payment. In addition, certain of PGW's requested waivers may be reasonable under the circumstances if appropriate conditions are included. These include the extension of the time limitation for terminations from 30 days after the initial notice to 60 days, so long as the customer can stop the termination by paying the noticed amount of arrears, and permitting PGW to terminate on a Friday as long as those customers faced with such terminations have access to the full array of services necessary to deal with a termination of gas service. The OCA submits that these alternatives to PGW's broad-based waiver requests, along with the changes made as a result of the on-going Collections Initiative, will provide PGW with additional tools in order to continue to improve its collections rate. Further improvement of the Company's collections, along with the assistance pledged by the City of Philadelphia, should help get PGW back on the road to financial fitness.

As for the other specific waivers of Chapter 56 proposed by the Company, the OCA submits that these requests are overly broad and should be rejected, modified or made subject to appropriate conditions in order to adequately protect consumers. The OCA submits that a majority of PGW's requests for waivers tilt heavily in favor of PGW's financial considerations and do not adequately balance the consumer protection rights of PGW customers as required by the *June 2 Order*. Furthermore, PGW has failed to provide adequate support for the waiver requests in the form

of empirical data to support each Chapter 56 waiver request. Instead, PGW bases the estimated cost savings and corresponding loss of protection to customers on untested assumptions, conjecture, and speculation. For the reasons stated below, the OCA submits that the majority of PGW's Chapter 56 waiver requests should not be granted, and that instead, all reasonable alternatives should first be explored.

As noted above, the *June 2 Order* also consolidated several other pending matters into this Investigation Proceeding. This includes the two issues raised in the Commonwealth Court remand, as defined in the Commission's Secretarial Letter dated May 14, 2004 at Docket No. M-0021612. The investigation was also to examine the level of PGW's universal service costs as well as the cost effectiveness and management of those programs. Finally, the Commission consolidated the pending request by PGW to implement a means-tested Senior Citizen Discount. The OCA will address the remand issues, raising its concerns with certain aspects of the Company's request. Proposals regarding universal service programs were not able to be fully developed in the time provided for in this investigation.

The Commission's *June 2 Order* stated a desire to take a "comprehensive approach" to PGW's financial and collection problems. *June 2 Order* at 4. PGW's financial and collection problems are extensive and complex. In order to meet the Commission's stated goal of completing the Investigation Proceeding by September 30, 2004, the parties were afforded only 12 days from the time PGW filed its Chapter 56 Waiver Petition on June 16 to conduct discovery and prepare testimony before the intervening parties' Direct Testimony was due. Since PGW did not file its Direct Testimony on the other issues addressed in the investigation proceeding until June 17, the parties were provided with only 11 days to investigate the significant and complex issues that the Commission consolidated into this Investigation Proceeding.

This abbreviated schedule has impacted the ability of the OCA to conduct a thorough examination of the issues raised in the Investigation Proceeding, such as the costs and cost-effectiveness of PGW's universal service programs. With respect to Chapter 56 waivers, the Company was unable to respond to a host of OCA data requests that were propounded on June 15, 2004 seeking data about PGW's collection activities that would be necessary for a full examination of these issues. See PGW's Responses to OCA Interrogatories, Set I (OCA Cross-Exh. FCI-1).¹ The OCA submits that given the constraints of this proceeding, the Commission should make it clear that consideration of PGW's current Chapter 56 waiver requests is not the last step in the process. The Commission should continue its investigation so that a full understanding and comprehensive analysis of PGW's financial and collections difficulties can be developed and long-term solutions sought to address these issues.

II. ARGUMENT

A. PGW's Chapter 56 Waiver Requests Should Be Denied In Substantial Part And The Further Innovations In Collections Recommended By OCA Should Be Pursued.

1. Standard For Granting Chapter 56 Waiver Requests.

Section 56.222 of 52 Pa.Code addresses modifications to Chapter 56 provisions:

- (a) If *unreasonable hardship* to a person or a utility results from compliance with a section in this chapter, application may be made to the Commission for modification of the section or for temporary exemption from its requirements.

* * * * *

¹ As of the close of the record in this proceeding, the Company still had not responded to most of the data requests in OCA Interrogatories, Set I.

- (b) A person or utility that files an application under this section *shall* provide notice to persons who may be affected by the modification or temporary exemption. Notice may be made by a bill insert or in another reasonable manner.

52 Pa.Code § 56.222(a) and (b)(emphasis added). Moreover, in the June 2 Order the Commission specifically stated that PGW has the responsibility to provide an “alternative standard or procedure” and to “explain ... how the alternative standard or procedure adequately balances consumer protection rights with PGW’s financial integrity.” *June 2 Order* at 5 n.2 (citing 52 Pa. Code §§ 5.43 and 56.222).

2. Introduction.

PGW is requesting waivers of provisions of Chapter 56 that contain important consumer protections to guard against “unreasonable termination of or refusal to provide that service.” See 52 Pa. Code § 56.1 (Statement of Purpose and Policy).² The effect of PGW’s request is far-ranging with a compounding effect of piling one Chapter 56 waiver upon another. As OCA witness Colton observed:

Each of the specific waiver requests submitted by PGW has an impact unto itself. The Company seeks to constrain the availability of payment plans (Request #1, #5). The Company seeks to broaden its ability to terminate service (Request #2, #4, #6). The Company seeks to increase the financial consequences of nonpayment (Request #3). The Company seeks to reduce notice requirements. (Request #7, #8). Each of these waiver requests individually has specifically identifiable consequences, many of which I discuss below. What tends to get lost in the discussion, however, is the synergistic impacts that the package of requests as a whole will have on PGW customers. The compounding effect of the package of waiver requests is to strip

² Section 1501 of the Public Utility Code provides that “[e]very public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities ... Such service also shall be reasonably continuous and without unreasonable interruption and delay. Such service and facilities shall be in conformity with the regulations and order of the commission.” 66 Pa. C.S. § 1501.

PGW customers of much of their ability to be protected against the loss of essential home heating services. One of the stated purposes of Chapter 56 is to protect against unreasonable termination of service. (52 Pa. Code §56.1).

It is important to note, for example, how BCS emphasized the inter-relatedness of proposals in its Draft Report in the previous docket on the control of uncollectible accounts. In setting out its recommendations, BCS noted that “these groups reflect the Bureau’s perspective that the recommendations are interdependent, and as such, no single recommendation is meant to stand alone ... Since the recommendations are interdependent and as a whole provide a balanced approach, failure to implement one recommendation may affect the impact of effectiveness of other recommendations.” (BCS Final Report, at 6).

OCA St. FCI-1 at 17-18. The OCA submits that granting such sweeping waivers as those requested by PGW will have a compounding effect and cause severe detriment to many consumers.

The modifications and waivers of Chapter 56 proposed by PGW, particularly those pertaining to termination of service, would leave consumers without heat during the winter heating season and could have life-threatening ramifications. According to the Bureau of Consumer Services’ 2003 Cold Weather Survey Results for Natural Gas Companies, 4,567 households in PGW’s service territory were without service during the 2003 winter heating season. In addition, 918 PGW customers were using potentially unsafe heating sources, including kerosene heaters, kitchen stoves, and oil-filled space heaters. *See* OCA Cross-Exh. FCI-2. The OCA submits that PGW’s proposed Chapter 56 waivers could lead to a significant increase in these numbers.

The OCA is particularly concerned with the impact several of these requests will have on Level 3 customers, who fall within 151% to 300% of the Federal Poverty Level (“FPL”). Level 3 customers do not qualify for PGW’s universal service programs or many other public assistance programs. Many of these customers, particularly those with incomes at the lower end of this wide range, are considered to be the “working poor” and live from paycheck to paycheck. A family illness

or a missed work day may have detrimental effects on these customers' abilities to sustain themselves. PGW requests modifications to several Chapter 56 provisions for Level 3 customers, for example, the winter shutoff rules and the payment arrangements for restoration of service, that may leave many of these Level 3 customers without heat during the winter heating season. It should be noted that the annual income of a single person living at 150% of the federal poverty level is less than \$14,000 per year, while the income of a four-person household at 150% of federal poverty level is just over \$28,000 per year. Since many of PGW's waiver requests are targeted at Level 3 and 4 customers, one dollar more of income above 150% of poverty would strip these households of Chapter 56 protections for this essential service under PGW's proposals.

According to a 2003 PathwaysPA report pertaining to Pennsylvania, "a growing number of working parents are finding that they are struggling to stretch their wages to meet the rising cost of basic necessities for their families." *The Self-Sufficiency Standard for Pennsylvania, Summary Report, PathWaysPA, Executive Summary* ("PathWaysPA Report").³ The PathWaysPA Report further states that "although many of these families are not poor according to the official poverty measure, their incomes are inadequate to meet their basic needs." *PathWaysPA Report, Executive Summary*.

For example, in order to be self-sufficient in Philadelphia County, a three member family, including a single parent with an infant and a preschooler, must earn a monthly gross salary of \$3,230. *PathWaysPA Report* at 8. This would place a three-member family above 200% of the FPL. Although a three-member family making less than that amount in Philadelphia County is not

³ The PathwaysPA Report can be found at the following website:
http://pathwayspa.org/programs/Self_Sufficiency_Standard_for_Pennsylvania_2004.pdf

considered to be self-sufficient, these families may still fall within Level 3 and be subjected to the loss of consumer protections proposed by PGW.

PGW's waiver requests, premised upon the assumption that all of these customers can afford to pay their utility bills and simply do not pay them, are seriously misplaced. Many of these customers struggle to make ends meet but often find that there is too little income to pay consistently and no public assistance available to them. Chapter 56 is designed to assist those customers by rehabilitating their payment patterns and preventing collection mechanisms from further exacerbating their problems. Chapter 56 also helps to ensure that these customers have reasonable access to utility service.

Chapter 56 plays a critical role in ensuring that the public health and safety is not placed into jeopardy, particularly when factors beyond a household's control – such as family illness or emergency – result in payment problems. PGW's proposals here unseat the balance that was struck by Chapter 56, and attempts to block access to regulated public utility service through onerous deposit requirements and identification requirements. PGW's proposals must be strictly scrutinized given their significant effects.

The OCA has submitted the testimony of Roger D. Colton in this proceeding.⁴ OCA *witness Colton details the nature of the protections provided by Chapter 56 and the potential harm to consumers that could arise as a result of the elimination or modification of these protections.* In

⁴ Roger Colton is a principal in the firm of Fisher Sheehan & Colton, Public Finance and General Economics. In that capacity, he provides technical assistance to a variety of public utilities, state agencies and consumer organizations on rate and customer service issues involving telephone, water/sewer, natural gas and electric utilities. He works primarily on low-income energy issues. This work involves not only rate and customer service work, but involves the design and implementation of low-income energy assistance programs as well.

addition, OTS witness Mumford and Action Alliance witness Geller provided extensive testimony about the effects of PGW's waiver requests.

Although there is evidence that PGW's collections rate is improving, the OCA agrees that PGW should be provided with additional tools to address its collections problems. However, rather than seeking widespread waivers to Chapter 56, OCA witness Colton sets forth two common-sense alternatives to Chapter 56 waivers for the Commission's consideration. These alternatives pertain to modern innovations in collections that PGW should incorporate into its collections practices that would lead to an improved collections rate. The two recommendations are (1) an increased use of Electronic Funds Transfer ("EFT") payments for customers on payment arrangements with incomes at or above 250% of the federal poverty level, and (2) implementation of mandatory budget billing for all PGW residential customers. Mr. Colton has also recommended that PGW consider a credit scoring pilot program similar to the programs currently utilized by other Pennsylvania utilities. The OCA submits that the Commission should consider alternatives such as these before it grants PGW's request for waiver or modifications of Chapter 56. Such innovations in utility collection practices could provide PGW with additional tools – to go along with its Collection Initiative – that could lead to improved collections and help stabilize PGW's financial condition.

If the Commission considers PGW's Chapter 56 waiver requests, the Commission must carefully scrutinize these requests in light of all of the facts. The Commission's Chapter 56 rules and regulations have been developed over decades in order to protect against unreasonable termination of service, and should not be modified as requested by PGW without a thorough evaluation of each request. In addition, the Commission should consider other alternatives – such as those proposed by OCA witness Colton – before granting sweeping waivers to Chapter 56 as

requested by the Company. As the Commission stated in a Chapter 56 rulemaking order, the Commission has the responsibility “to ensure that the quality of utility service remains high while not unreasonably restricting the effort of the utility companies to collect amounts due to them.” *Standards and Billing Practices for Residential Utility Service*, Docket No. L-960114, Pa. Bulletin, Vol. 28, No. 29 at 3379 (Order entered July 18, 1998).

Finally, the OCA would note that the Natural Gas Choice and Competition Act, 66 Pa.C.S. §2201 *et.seq.*, brought PGW under the jurisdiction of the Commission and its rules and regulations in order to extend these important consumer protections contained within the Commission’s jurisdiction to PGW’s customers. The intent of such legislation was not to bring Chapter 56 regulations down to PGW standards, but to bring PGW up to standards that the Commission has deemed appropriate and that other utilities in the Commonwealth have been following for many years. The intent of the Act was not to allow PGW to weaken important consumer protections that impact the health and safety of PGW’s customers. To the contrary, the Act specifically contains important consumer safeguards to ensure that there was no diminution of service as a result of the Act:

Customer service and consumer protections and policies for retail gas customers shall, at a minimum, be maintained at the same level of quality under retail competition as in existence on the effective date of this chapter.

66 Pa.C.S. §2206(a). The Act also provided that protections for low-income customers not be reduced:

The commission shall, at a minimum, continue the level and nature of the consumers protections, policies and services within its jurisdiction that are in existence as of the effective date of this chapter to assist low-income retail gas customers to afford natural gas services.

66 Pa.C.S. § 2203(7). PGW admits in its Chapter 56 Waiver Petition that its proposed modifications and waivers would alter rules that had been in place at PGW itself for many years – even prior to the Company coming under the jurisdiction of the Commission. Chapter 56 Waiver Petition at 16. The OCA submits that PGW’s proposal would weaken important consumer protections and safeguards that PGW has provided for many years. This is inconsistent with the intent of the Act, and should be rejected.

For the reasons set forth below, PGW’s request for waivers of certain Chapter 56 provisions does not meet the standard for waiver of Chapter 56 regulations or the requirements of the *June 2 Order*. PGW’s Petition does not adequately explain how the proposed modifications to Chapter 56 balance consumer protection rights. In fact, PGW’s Petition weighs heavily in favor of PGW’s desire to increase its collections rate and essentially ignores any impact on consumers.

3. PGW's Financial Condition.

The OCA would note that recent proceedings demonstrate that PGW's financial position is not as bleak as it suggests, and a waiver of Chapter 56 provisions to the extent requested by PGW is unnecessary. In fact, since PGW has been brought under the jurisdiction of the Commission Chapter 56 regulations on September 1, 2003, its collections rate has been increasing. OTS St. 2 (Mick) at 6. The OCA submits that PGW's ongoing collection initiative is having a positive impact on PGW's collections rate. PGW's collections rate for the 12 months ending March 2004 was approximately 90.5%, up from the originally projected collections rate of 89.5%. If this improvement continues, PGW is projecting a collections rate of 93% at the end of the current fiscal year on August 31, 2004. Each percentage change in the collections rate results in an \$8 million dollar increase in the Company's cash reserves. PGW St. CRRC-1R at 2; PGW St. CRRC-1 at 5. In its recent CRRC Order, the Commission rejected the notion that PGW's financial condition required drastic actions:

Generally, we are of the opinion that PGW's presentation of its financial situation is internally inconsistent. PGW, while warning of a poor financial picture, also cites a commitment from the City to assist PGW to improve its financial condition. Thus, PGW's financial outlook is not as desperate as it seemed at the time the Petition was filed. We commend PGW for taking appropriate steps to improve its cash flow for this fiscal year and look forward to further improvement. Nevertheless, we find that PGW has not carried its burden of proof and has not shown that its current financial condition warrants actions that would depart from adherence to Pennsylvania ratemaking law and principles.

CRRC Order at 11.

Over the past several years, PGW has been given rate increases and other forms of rate relief from this Commission and the Philadelphia Gas Commission to alleviate cash flow problems that may very well relate to internal collection practices. PGW is currently taking the

necessary steps to increase its collections rate. PGW cannot now blame its cash flow problems on Chapter 56. Many of these collections problems date back to well before PGW ever came under the jurisdiction of the Commission. PGW is still in the process of training customer service representatives to implement the collection standards contained in Chapter 56. PGW's request for wholesale waivers of Chapter 56 provisions undo many months of training, require additional financial resources for retraining, and will cause customer confusion. Again, the intent of the Natural Gas Choice and Competition Act in bringing PGW under the jurisdiction of the Commission, was not to have PGW working under a set of rules that provide less consumer protection.

4. **Further Innovations In Collections Recommended By OCA.**

a. Introduction.

While the OCA contends that PGW's request for waivers is premature and unnecessary, that does not mean that there are not other avenues that could be pursued to assist PGW in improving its collections. PGW still faces many challenges in the area of collections and, in addition to the Collections Initiative, there may be other ways to augment the Company's collections efforts. OCA witness Colton is very familiar with these challenges and the need to provide PGW with additional tools to improve its collections:

I have been working on PGW payment problems for probably close to 20 years – 15 years now, and I am well aware of the situation that PGW is in that it is a utility with a confined service territory. It's never going to get bigger, and that confined service territory has substantial poverty in it. And it was true when I first began working on PGW issues in 1986 and it's true today.

And I think that given those issues, the combined issues of poverty and non-payment and the increasing poverty and the increasing inability to pay due to high natural gas prices where inability to pay due is creeping above 150 percent of poverty, that it

would be impolitic, it would not – I can't sit here and say that we should do nothing.

And that's why I offered alternatives which I thought would preserve the consumer protections of Chapter 56 while starting to address some of those structural issues that have been identified, and which I know from personal experience exist for PGW.

Tr. 807. The OCA submits that before the Company is granted waivers to Chapter 56 that would seriously erode important consumer safeguards, all other reasonable measures must first be explored.

In his direct testimony in this proceeding, OCA witness Colton identified several innovations in collections that PGW should adopt before pursuing significant Chapter 56 Waivers. OCA St. FCI-1 at 7-15. The first involves an increased use of Electronic Funds Transfer ("EFT") payments for customers with incomes at or above 250% of the federal poverty level ("FPL"). The second involves mandatory budget billing. The OCA also recommended a credit scoring pilot program rather than a mandatory deposit from all new applicants.

The Company appears to be receptive to the OCA's alternative recommendations. Tr. 791. PGW witness Gyory testified that the solutions offered by OCA witness Colton certainly should be explored. PGW St. CP-1R at 10. The OCA submits that implementation of these reasonable alternatives to the grant of Chapter 56 waivers, could yield immediate improvement in PGW's collections results. *Id.* at 15.

b. Electronic Funds Transfer ("EFT").

OCA witness Colton's first recommendation is the increased use of e-commerce in its payment arrangements for customers with incomes at or above 250% of FPL. EFT systems are widely used in today's economy. OCA witness Colton testified about how PGW could incorporate the use of EFT into its payment arrangement practices:

An EFT payment agreement for PGW arrears would likely be arranged as an Automated Clearinghouse (“ACH”) debit transaction. In such a transaction, PGW’s financial institution would originate the transaction by sending a request for funds to the customer’s financial institution. The customer’s financial institution then transfers the funds in order to settle the transaction. ACH transactions generally settle the next day after they are originated. Settlement means that the funds are actually transferred and made available to the requesting institution.

OCA St. FCI-1 at 10-11.

PGW would need prior authorization from the customer to make the monthly payment request. This could be accomplished by making the payment arrangement contingent upon a grant of prior authorization to PGW to make the monthly call on the customer’s account. OCA St. FCI-1 at 10. That way, PGW would not need to gain customer approval on a monthly basis. *Id.*

OCA witness Colton’s proposal would require all customers that want to enter into a payment arrangement that are above 250% of FPL to also enter into an EFT agreement with PGW, with certain narrow exceptions:

Through a payment agreement, the PGW customer is agreeing to make monthly payments toward an arrears in any event. The e-commerce aspect of the agreement merely reduces costs as well as the possibility that the customer will breach the agreement.

* * * * *

I propose that PGW make EFT agreements a precondition of payment plans for customers with incomes at or above 250% of the Federal Poverty Level, with narrow hardship exceptions akin to those promulgated by the Minnesota and California tax agencies. Agreements that would impose undue hardship, agreements with customers lacking checking accounts, and agreements for arrears that are below designated threshold limits (to be determined by PGW), could be exempt.

OCA St. FCI-1 at 11.⁵

⁵ OCA witness Colton recommends that the use of EFT be limited to those customers at or above 250% of FPL. A fundamental assumption for an EFT requirement to work is that

The OCA submits that requiring the use of EFT payments as a condition of entering into a payment arrangement for those customers whose income is at or above 250% of FPL would enhance PGW's collections and improve its financial condition.

c. Mandatory Budget Billing.

The second innovation in collections that OCA witness Colton proposes is that PGW place all residential customers on levelized budget billing plans. OCA St. FCI-1 at 12-13. OCA witness Colton testified about the justification for this recommendation:

It is clear that the primary reason for nonpayment of natural gas bills is the high burden which winter natural gas heating bills place on customers. While this is primarily true for low-income customers, it is true across-the-board as well. I reach this conclusion based on a study of nearly four years of payment data for both fuel assistance recipients and non-fuel assistance recipients in the State of Iowa. I have attached a copy of that study as Appendix C. I find that levelizing bills, and eliminating the peaks in winter natural gas bills, will not only improve payment patterns, but will help the Company by generating a prepayment of some portion of the winter bills before they become due.

Based on this analysis, I conclude that PGW should not be held to an historic billing structure under which customers are billed after-the-fact based on current usage. Instead, PGW should be allowed automatically to place residential customers on levelized budget billing plans. Customers could, upon a demonstration of creditworthiness, be allowed to opt out of the levelized budget billing.

OCA St. FCI-1 at 12-13.

The OCA submits that the use of mandatory budget billing would lead to improvement in the Company's cash flow by generating pre-payments of winter revenue. OCA St.

customers have bank accounts from which payments may be drawn. There is sufficient data to suggest that many customers below 250% of FPL are likely not to have bank accounts at all, or if they do, many do not maintain sufficient funds in them to ensure that an EFT payment can be made. OCA St. FCI-1 at 11.

1 at 14. Through budget billing, PGW customers would pre-pay some portion of their winter heating bills during the non-heating months. *Id.* Thus, budget billing yields cash flow advantages to PGW by providing customers with more affordable, levelized bills and prepayment of a portion of PGW's winter revenues. Prior to such conversion, however, consumer notice and education would be necessary. *Id.* at 15.

d. Credit Scoring Pilot Program.

Another recommendation made by OCA witness Colton was that PGW should be allowed to implement a credit scoring pilot program similar to what other Pennsylvania utilities have been doing. The Commission has previously approved credit scoring pilot programs for several Pennsylvania utilities.⁶ This requires a partial waiver of the Chapter 56 Credit Standards found at Section 56.32(2). OCA witness Colton explained how these pilot programs operate:

The need for PGW is not to collect deposits from every customer. The need for PGW is to identify those customers that represent a risk of the permanent loss of revenue due to nonpayment. A number of Pennsylvania utilities have implemented a credit scoring pilot project involving the Energy Risk Assessment Model (ERAM) to accomplish precisely that. Pursuant to these pilots, credit scoring will apply to applicants for service who are not exempt from providing security deposits due to a favorable prior utility payment history. In addition, an applicant that is certified as low-income will not be required to post a deposit. If an applicant is unable to pay a security deposit, and indicates an inability-to-pay, the applicant will be referred to the appropriate agency to determine whether he or she is eligible for the

⁶ See, e.g., *Petition of Columbia Gas of Pa., Inc. and PPL Electric Utilities Corp for Limited Waiver of 52 Pa. Code §56.32(2)*, Docket Nos. P-00001807 and P-00001808 (Orders entered February 8, 2001 and March 8, 2001); *Petition of The Peoples Natural Gas Co. d/b/a Dominion Peoples for Limited Waiver of Regulations at 52 Pa. Code §56.32(2)*, Docket No. P-00021972 (Order entered September 13, 2002); *Joint Petition of Equitable Gas Co. and the Office of Consumer Advocate for Limited Waiver of Regulations at 52 Pa. Code §56.32(2) to Permit an Experimental Program to Determine Residential Customer Security Deposits Based Upon Credit Scoring*, Docket No. P-00011915 (Order entered November 15, 2001).

company's Customer Assistance Program (CAP). Other protections are also included in these pilot programs.

OCA St. FCI-1 at 34.

PGW claims that it lacks the software necessary to implement credit scoring. Chapter 56 Waiver Petition at 21. The OCA submits that PGW should be required to direct its resources to a credit scoring program such as those previously approved by the Commission in order to enhance the efficiency of its credit and collections activities. OCA St. FCI-1 at 34-35.

e. Conclusion.

The OCA submits that reasonable alternatives exist to the grant of Chapter 56 waivers sought by PGW. The alternatives recommended above, along with PGW's Collections Initiative, can yield immediate results for PGW's collection efforts. In addition, the OCA submits that PGW's Collections Initiative appears to be generating positive results. The Company should be required to allow that Collections Initiative to continue so that its impacts on collections can be evaluated. Pursuing collections within Chapter 56 requirements should be the highest priority for the Company and can produce improved collections as the Collections Initiative has already demonstrated.

5. Specific Chapter 56 Waiver Requests.

PGW requests the following waivers of Chapter 56. The OCA submits that a majority of these requests are overly broad and unsupported. The following is OCA's response to each specific request for waiver or modification to Chapter 56.

a. 52 Pa. Code § 56.191 – Require Full Payment Of Outstanding Balance Before Restoration of Service.

PGW proposes to modify the payment arrangement procedures for restoration of service contained in Section 56.191 for Level 3 and Level 4 customers. Section 56.191 provides that a utility must reconnect service by the end of the first full working day after full payment of

outstanding charges and a reasonable reconnection fee is received; however, these amounts can be amortized over a reasonable period of time. 52 Pa. Code § 56.191. PGW requests that Level 3 and Level 4 customers be required to pay the full amount of the outstanding balance and restoration fee without a payment arrangement before service can be restored. Chapter 56 Waiver Petition at 19-20. PGW estimates that this will result in a \$4.2 million savings. *Id.* at 19. PGW states that this modification will protect PGW when customers “stop paying their bills during the winter period but continue to receive gas for which they subsequently make few or no payments.” *Id.* PGW claims that customers’ rights are sufficiently protected because Level 1 and Level 2 customers, who are below 150% of the FPL, will not be affected by this modification. *Id.*

The OCA submits that the Company’s proposed modification to this Chapter 56 provision does not adequately weigh the impact on consumers, particularly Level 3 customers. Many Level 3 customers at the lower end of the income range for this level are working poor and live from paycheck to paycheck. They do not earn an income that is sufficiently high enough to allow them to meet their living expenses without occasional disruption. However, they earn too much to qualify for PGW’s universal service programs or other social programs. OCA St. FCI-1 at 22-24. Many Level 3 customers that have been terminated may not be able to provide payment in full of their arrearage to have their service restored, but could make monthly payments toward their arrearage.

OCA witness Colton testified about why many Level 3 customers may have trouble meeting their living expenses on a regular basis:

The National Priorities Project documented it’s the minimum monthly costs for a four-person household in each state in 1999. This research found that a four person household in Pennsylvania (two adults with two children) would need, on an after-tax basis, \$34,069 a year (1999\$) to maintain a subsistence budget.

* * * * *

The 2001 poverty level for a four-person household was \$17,650. The Pennsylvania cost of living (on an after-tax basis) is thus nearly 200% of the Poverty Level. It is important to note that this budget I have identified is merely a subsistence budget. It may not meet a household's entire range of basic needs. According to the National Priorities Project, the household purchases day care that is 30% cheaper than the statewide average. The household spends half of what the average family spends on transportation. There is no savings for repairs of a car, the home, or any appliances. There is no money for a college education or a vacation. There is certainly no savings for retirement.

OCA St. FCI-1 at 22-23.

The working poor, in particular would not have sufficient savings to make a lump sum payment to have service restored. Research demonstrates that the overwhelming number of persons without bank accounts are those in the lower income ranges. OCA St. FCI-1 at 24. OCA witness Colton testified that four out of five "unbanked" consumers have incomes below \$25,000. Moreover, lower-income households that do have bank accounts frequently have insufficient savings to make a substantial lump sum payment to a utility in order to restore service. *Id.* The OCA submits that PGW's proposal could lead to many working poor customers entering the winter without heat if they are unable to make the lump sum payment necessary to restore service.

Moreover, the OCA submits that even some customers with higher incomes can be faced with emergencies, such as unexpected medical expenses, that can cause payment troubles and impact the ability of the household to make a lump sum payment to restore service. As Action Alliance witness Geller testified:

... Level 3 and Level 4 covers a wide range of household incomes, which are not immune to cash flow problems resulting from loss of job, sudden disability, domestic discord, etc.

AA St. 1 at 11. It is very difficult to anticipate every financial crisis that may befall a household, even higher income households. The OCA submits that the flexibility contained in Chapter 56 allows all circumstances to be properly considered and balanced.

Without the ability to enter into a payment arrangement in order to restore service, customers could be left without heat during the winter heating season even though they may now be able to pay for service. The provisions of Section 56.191 protect the rights of a customer to reasonable access to restored service when their financial situation stabilizes. Keeping these customers off of the system because they cannot come up with a lump sum payment may jeopardize the health and safety of the public and, in the end, result in the loss of customers to PGW. *See* 66 Pa.C.S. § 1501.

The OCA also submits that PGW's rationale in support of such a waiver is unsupported. To the extent that PGW has customers that have repeatedly broken payment arrangements, the current rules already permit PGW to address this problem. As Action Alliance witness Geller noted:

Under Chapter 56 Section 56.191, a utility may require full payment of the outstanding balance as a condition of restoration from a customer terminated for non-payment if the customer has defaulted on two payment agreements, or on a BCS decision arising from an Informal Complaint, or on a Commission decision arising from a Formal Complaint.

AA St. 1 at 13. The OCA submits that PGW should first avail itself of the recourses currently available to it under Chapter 56 before it seeks blanket waiver of this Chapter 56 protection.

The OCA also submits that PGW's estimated savings value is unsupported and based on faulty assumptions. For instance, in calculating the estimated savings from this waiver, PGW assumes that 90% of customers terminated will reconnect service. Chapter 56 Waiver Petition,

Appendix A (Gyory) at 5. This is based upon historic averages. PGW further assumes that each of these customers will pay the full delinquent amount in order to have service restored. The OCA submits that such assumptions are not sustainable. PGW may have historically restored service to 90% of shutoff accounts when restoration was permitted upon a customer entering into a payment arrangement. However, under PGW's proposed rules, service can only be restored when the entire arrearage is paid off in a lump sum. The OCA submits that once such a rule is put in place, PGW's restoration rate could fall far below 90% as customers have difficulty making the lump sum payment necessary to restore service.

Furthermore, as Action Alliance witness Geller testified, PGW's estimated value for this waiver request assumes that under the current BCS guidelines, Level 3 and 4 customers that have been terminated would not be required to pay anything upfront to get service restored. AA St. 1 at 13. The OCA submits that such an assumption is unfounded. To the contrary, under current BCS guidelines, Level 3 and 4 customers would be required to make an up-front payment in order to obtain restoration of service. *Id.* PGW's calculation of the value of this waiver does not factor in any such payments and is therefore invalid.

For the reasons set forth above, the OCA submits that the Company's proposed waiver is overly broad, unsupported and presents a substantial public health and safety issue. For that reason, PGW's request for waiver of Section 56.191 for Level 3 and Level 4 customers should be denied.

b. 52 Pa. Code § 56.100 – Winter Termination Rules.

PGW proposes to waive the Chapter 56 provisions pertaining to winter terminations for Level 3 and Level 4 customers. Chapter 56 Waiver Petition at 20. Section 56.100 generally prohibits termination of heat-related services from December 1 through March 31. However, the

prohibition on winter terminations is not absolute. If a utility seeks to terminate service during the winter where a reasonable payment arrangement cannot be reached, it may request permission from the Commission to terminate a customer on a case-by-case basis. 52 Pa. Code § 56.100(2).

PGW claims that the Commission's winter shutoff rules are cumbersome and that a waiver of the procedure for Level 3 and Level 4 customers could have a value of \$1 million to the Company. Chapter 56 Waiver Petition at 20. The OCA would note, however, that of the 133,000 customers in arrears, PGW does not know how many are Level 3 and Level 4 customers. Tr. 668.

The consumer protections contained in the Commission's winter termination rules prevent life-threatening results. If these provisions are waived for Level 3 and Level 4 customers, it could result in a large increase in the number of persons living without a safe and adequate heat source during the winter, thus presenting a significant public health and safety concern. Action Alliance witness Geller described some of these concerns:

Mildly stated, this waiver request, if granted, would unnecessarily place thousands of individuals in potential jeopardy for health, safety, and their life. In addition, the potential unnecessary damage to the housing stock and plumbing which could result from having a significant number of unheated homes in winter is simply contrary to the principles of sound public social and economic policy.

AA St. 1 at 25. Again, this is a waiver request that significantly impacts the working poor. PGW's proposal inaccurately assumes that customers in Levels 3 are able to pay their utility bills but are using the winter moratorium regulations "as a shield to avoid paying bills." Chapter 56 Waiver Petition at 20.

As noted earlier, Level 3 includes many customers who do not have incomes that are sufficiently stable to allow them to meet their living expenses without occasional disruption. It should also be noted that even customers with higher incomes can experience financial emergencies

or medical emergencies that impact their ability to pay household bills in a timely manner. The case-by-case review of winter terminations provided for by Chapter 56 ensures that these situations are properly considered and that health and safety are not unnecessarily placed in jeopardy.

The Commission recognized this point in its rulemaking, and also expressed concern about the possibility of accidental termination of innocent people during the winter. In a past rulemaking proceeding regarding whether Section 56.100 should be included in the Commission's regulations, the Commission stated, "We are especially concerned, however, that absent such a regulation a small minority of terminations may take place improperly, and may lead to life-threatening circumstances." *Standards and Billing Practices for Residential Electric, Gas, Steam Heat, Sewer, and Water Service*, Docket No. L-820073, Pa. Bulletin, Vol 13, No. 15 at 1252 (Order entered April 9, 1983). Therefore, Section 56.100 provides an important protection against wrongful termination of service during the winter.

Moreover, PGW provides no support for its assertions that customers are using the regulations as a "shield" and seems to base its request on a misperception that it may never terminate a customer in the winter for non-payment. Notably, to OCA's knowledge, PGW has not sought a Petition to terminate a customer during the winter heating season so it has little or no experience with the Commission's regulations. As Action Alliance witness Geller testified:

This PGW waiver request appears to be based upon a misunderstanding of Chapter 56 requirements. The term "moratorium" is repeatedly used, when in fact no such moratorium exists in law or in practice. Although winter termination procedures do require one additional step – a request of the Commission to authorize the termination – it is totally inappropriate for PGW to label this single step as "cumbersome," given the significant danger of loss of life associated with urban homes deprived of fuel for safe heating sources in the winter months. It should not be forgotten that the purpose of the procedures is not to frustrate utility collections, but to ensure that vulnerable households, including not only seniors, but

also children, mentally ill or disadvantaged, and otherwise disabled persons do not lose their lives to hypothermia or to fires caused by inadequacy of temporary emergency heating devices.

AA St. 1 at 25.

Action Alliance witness Geller went on to note that PGW has never even tried to request permission from the Commission to conduct a winter termination:

PGW's claim that the procedure is "cumbersome" has been made by a company that has not even tried to use the procedure. Not once last winter, despite its new collections initiatives, did PGW attempt to make a request for any winter termination. In addition, the Commission has clearly signaled its intention to assure utilities that their requests, once made, will be processed promptly, within 10 days of receipt. [citing *Frayne*]. PGW again is simply requesting relief from a critically important life saving procedure without making any effort to use the available procedures.

AA St. 1 at 26.

Another flaw in PGW's proposal is that PGW really has no way of determining whether a customer who is delinquent during the winter is a Level 3 or 4 customer or is a non-CRP Level 1 or 2 customer, since PGW would not have any income information on those customers. There is no requirement for a Level 3 or 4 customer to provide income verification to PGW. Tr. 666. Only if PGW was able to make contact with those customers to negotiate a payment arrangement and obtain income verification, could such a determination be made. Tr. 666. This could create a perverse incentive for customers to *avoid* contact with PGW customer service representatives in order to avoid disclosure of income information and exposing themselves to a possible winter termination.

PGW also concludes that customers who cannot make the necessary payment to reinstate service, can simply rely on state and local social services even though it targets this proposal to customers – Level 3 and 4 customers – that do not qualify for many social services. This

statement ignores PGW's public service obligation. PGW, as a regulated public utility, has been given an exclusive franchise to serve within its service territory and is under an obligation to provide safe and adequate service and to avoid unreasonable discontinuance of service. 66 Pa.C.S. §§1101, 1501; 52 Pa.Code §56.1.

The OCA submits that PGW has not demonstrated that its proposed elimination of the winter shutoff rules for Level 3 and 4 customers "adequately balances consumer protection rights with PGW's financial integrity." *June 2 Order* at 5 n.2. Additionally, PGW has utterly failed to show that this waiver request is consistent with the Commission's obligation to protect the health and safety of the public.

Rather than a waiver of the winter termination regulations, the OCA agrees with Action Alliance witness Geller who testified that a signal to non-paying customers and the public at large can effectively be sent if the Company would utilize the current process available for winter terminations:

If PGW, after a judicious selection of several appropriate cases of individuals clearly able to pay who have demonstrated an unwillingness to do so, requested and was granted permission to terminate, that, combined with the attendant publicity would send a clear signal to the public.

AA St. 1 at 26. The OCA submits that PGW should work in conjunction with the Commission in this area, in order to effectively address the problem of non-payment by customers who are able to pay but do not, without creating the widespread public health and safety concerns that would arise from a blanket waiver of the winter terminations regulations.

c. 52 Pa. Code § 56.32 – Mandatory Deposits For New Customers.

PGW requests a waiver of the Chapter 56 Credit Standards. Section 56.32 allows an applicant to receive public utility service without posting a deposit by showing a prior utility

payment history, by owning property or leasing property for at least one year, or by otherwise demonstrating that he or she is not a poor credit risk. 52 Pa. Code § 56.32. If an applicant does not establish credit under section 56.32, the customer may furnish a third party guarantor to avoid a deposit. 52 Pa. Code § 56.33. The regulations clearly provide that a utility “shall” provide service if the applicant meets one of these criteria. The regulations also provide customers with the option to pay deposits with three installments. 52 Pa. Code § 56.37.

PGW proposes to set a flat deposit fee for *all* new customers, regardless of whether they pose a credit risk or not. Chapter 56 Waiver Petition at 21. PGW proposes to set the deposit for new applicants at twice the average monthly bill for customers – \$250 for heating customers and \$100 for non-heating customers. If an existing heating customer seeks to restore service after termination, a deposit of \$500 would be required. PGW Petition, Appendix B. For non-heating customers seeking restoration of service after termination a deposit of \$200 would be required. *Id.* This waiver will not apply to customers who are part of the CRP program. *Id.* PGW estimates a value of \$7.6 million. PGW Petition at 21.

OCA witness Colton testified that a blanket deposit rule such as what PGW has proposed here will not be effective in preventing late payments. OCA St. FCI-1 at 31. The only purpose for a security deposit is to protect against revenue loss, not to prevent late payments. *Id.* Mr. Colton’s research indicates that late payment is not predictor of the potential loss of revenue through disconnection and bad debt. *Id.*

Action Alliance witness Geller testified about the fundamental unfairness of such a proposal:

The purpose of the deposit is to protect PGW against default by an applicant who is a demonstrated credit risk. The requirement for a flat turn-on deposit for all new customers regardless of past credit

record effectively transforms a security deposit from an escrow payment designed to provide equitable protection for the utility into an advance funding mechanism, a kind of forced loan by the customer to the utility. This is objectionable, because as the name suggests, the purpose of the payment is to provide “security” against known risks, not an advance. Applicants with good credit are unduly required to post a deposit for reasons totally unrelated to their own credit-worthiness.

AA St. 1 at 15. OTS witness Mumford testified that imposing a deposit requirement on all new customers – regardless of their credit risk – would likely lead to numerous complaints from customers. OTS St. 4 (Mumford) at 7. He cited an example from the telephone industry prior to 1984 when Bell Atlantic implemented a tariff rule requiring deposits as a condition of service. This requirement was eliminated by the residential telephone service regulations at 52 Pa.Code §64.32, that eliminated the flat turn-on deposit fee and replaced it with credit standards similar to those at Section 56.32.

Furthermore, the OCA submits that PGW’s proposed deposit requirement imposes a significant barrier to public utility service. Lower income households may not be able to come up with the initial security deposit. OCA St. FCI-1 at 33. This is particularly true if the Commission grants PGW’s request to require the *entire* deposit to be paid up front rather than in installments. *Id.*

Once again, PGW provides little empirical evidence to support its claimed cost savings of \$7.6 million. These deposits would impact PGW’s collections rate *only* where a customer is terminated and the deposit is retained in full by the Company. Otherwise, once a customer establishes credit with the utility, the deposit is returned to the customer. *See* 52 Pa. Code § 56.53. In calculating the estimated value of this waiver, PGW assumes that half of its customers will never recover their deposit. This is based upon PGW’s historic average number of customers who pay late,

not on any analysis of how many customers who must make a deposit with a utility, ultimately establish credit and have the deposit refunded. As OCA witness Colton noted, “late payment, standing alone, does not represent an adequate predictor of the loss of revenue due to bad debt.” OCA St. FCI-1 at 31. Therefore, PGW’s claim that it will realize an additional \$7.6 million in collections per year is unsupported.

PGW also proposes that “[c]ustomers that pay on time for one year will have their deposits applied to their account.” Chapter 56 Waiver Petition, Appendix A (Gyory) at 9. The OCA submits that this is in violation of Section 56.53(4) which requires deposits to be refunded in cash. 52 Pa.Code §56.53(4). PGW has not sought a waiver of this provision of Chapter 56. Pursuant to Chapter 56, deposits are refundable with interest to customers when a customer has paid bills for service for 12-consecutive months in a timely manner.⁷ See 52 Pa. Code §§ 56.53(4), 56.57. Therefore, Chapter 56 does not allow PGW to apply a customer deposit to his or her account after one year, unless the customer is terminated or has service discontinued and has an outstanding balance. 52 Pa.Code § 56.53(4). Moreover, applying such a large deposit to the account could be counter-productive. If the deposit is applied, a customer may not have to pay their bill for two months or more, thus breaking the regular payment pattern that has been established. OCA St. FCI-1 at 33.

As the Commission is aware, a number of utilities in Pennsylvania have requested partial waivers of Section 56.32 in order to implement a credit scoring program which evaluates a utility customer’s creditworthiness. This process, utilizing Equifax’s Energy Risk Assessment

⁷ According to section 56.53, deposits are also refunded when a customer establishes that he or she is not an unsatisfactory credit risk; however, it is assumed that PGW’s request for waiver of 56.32 extends to this provision. See 52 Pa. Code § 56.53(2).

Model (“ERAM”), helps to more clearly identify those customers who pose a risk for loss of revenue to the Company. Rather than a broad-based deposit requirement that presents a barrier to service to all customers, credit scoring is a tool that more appropriately addresses this problem. PGW claims that this process would be costly and burdensome due to the volume of customers who are potential credit risks. Chapter 56 Waiver Petition at 21.

Despite PGW’s statement, that a credit scoring device is “costly and burdensome” given the volume of PGW customers who are a potential credit risk, PGW has provided no evidence of this. Chapter 56 Waiver Petition at 21. Furthermore, PGW claims that its software systems cannot accommodate credit scoring. *Id.* As the OCA recommended above, PGW should be required to direct additional resources to upgrading its software so that it can do credit scoring consistent with the program in place for other Pennsylvania utilities. OCA St. FCI-1 at 34-35. If PGW can upgrade its software systems in order to positively identify new customers, it should be able to adapt its systems to do a task such as credit scoring, just like other Pennsylvania utilities are able to do. Instead of pursuing collections practices that other utilities have successfully utilized, PGW proposes to require deposits from all new customers – many of whom have good credit and pay their utility bills timely.

Finally, PGW wishes to eliminate the payment period over which deposits can be collected. Section 56.38 provides that an applicant may pay a required deposit in three installments. 52 Pa. Code § 56.38. The OCA submits that PGW’s request for full upfront payment is unreasonable and should be rejected. For example, PGW is requesting a \$500 deposit from a heating customer that has previously been terminated. It is unlikely that such a customer – who had trouble paying his utility bill in the first place – is going to be able to come up with a \$500 lump sum deposit

to have service restored.⁸ PGW's request fails to balance the consumer's interest and fails to protect the public health and safety.

d. 52 Pa. Code § 56.35 – Requiring An Applicant To Pay For Service Rendered Under The Name Of Another.

PGW is requesting a waiver of Section 56.35. 52 Pa. Code § 56.35. Section 56.35 prohibits a utility from requiring an applicant to pay for residential service previously furnished to a person of another name, unless the applicant is legally responsible for that person. *Id.* PGW proposes that it be able to require an applicant to present positive identification to determine whether the applicant was a previous resident at the location where service is requested and, if so, require the applicant to pay any outstanding residential account accrued on the residence within the last four years or for the time the applicant was a resident. Chapter 56 Waiver Petition at 21, Appendix A (Gyory) at 9-11. PGW claims that modification of Section 56.35 would prevent customers from accumulating large balances, then after termination, requesting restoration in another person's name, a practice it refers to as the "name game." Chapter 56 Waiver Petition at 22.

PGW bases its request on a false assumption that *all* customers requesting the furnishing of service are gaming the system. In fact, PGW has provided no evidence that the "name game" is occurring in a substantial number of cases, nor does it designate how the requested modification will impact its financial condition.

The OCA submits that this waiver request should be rejected. Utility service is contractual in nature. OCA St. FCI-1; App. H; AA St. 1 at 18. A utility may not hold an applicant for service liable for an unrelated third-party's debt when the applicant was neither a party to the

⁸ This would be on top of having to pay the full arrearage to restore service under one of PGW's other waiver requests.

third-party's contract with the utility nor a party that contracted with the utility to be liable for the third-party's debt. OCA St. FCI-1; App. H. OCA witness Colton provided a legal analysis of this issue in his Appendix H and I. Mr. Colton testified why the Company's proposal should be rejected:

This PGW request violates a host of legal tenets regarding regulatory law, family law, contract law, and consumer credit law. It impermissibly allows the denial of service for a collateral matter. It impermissibly allows PGW to impute an implied-in-fact contract when faced with an express contract with contrary terms. It impermissibly allows PGW to ignore spousal responsibility laws. It impermissibly allows PGW to communicate the existence of a consumer's debt to a third party. The request should be denied. I have attached an analysis of the lawfulness of holding a person responsible for their roommate's utility bill as Appendix H. I have attached an analysis of the lawfulness of holding one spouse liable for the utility bills of the other spouse as Appendix I.

OCA St. FCI-1 at 36.

Action Alliance witness Geller testified that absent fraud, only a person who contracts for service with a utility can be held liable to pay for it. AA St. 1 at 18. Mr. Geller testified that PGW's proposal shifts the burden of proof from PGW to the customer:

Fraud must be shown, not presumed. PGW's proposal would presume that when a person who lived at the account address with a utility customer who defaulted and underwent termination service, then applies for service, fraud must have occurred. PGW wants the burden of showing no fraud placed on the applicant who must then demonstrate that the person has "legitimately taken over service from someone in the household for which they had no responsibility." Until that demonstration is made to PGW's satisfaction, or on appeal to BCS, no service will be provided without assumption by the applicant of the prior customer's bill.

AA St. 1 at 18-19.

The OCA submits that PGW cannot hold someone liable for the debts of another. To do so would impose a significant barrier to the provision of a vital public utility service. Therefore, this request should be denied.⁹

e. 52 Pa. Code § 56.97 – Limitation Of One Payment Arrangement.

PGW proposes to waive the Chapter 56 provision requiring reasonable payment agreements to avoid termination. Under PGW's proposal, customers would be limited to only one payment arrangement with specified minimum payment amounts. Chapter 56 Waiver Petition, Appendix A (Gyory) at 11-12. PGW's proposal would only permit a customer to have one payment arrangement unless there is a change in income that would move the customer into a lower BCS income tier. *Id.* PGW claims that this modification is consistent with the Commission's holding in *Frayne v. PECO Energy Co.*, Docket No. C-20029005, (Opinion and Order entered Dec. 23, 2003). The OCA disagrees that this proposal is consistent with *Frayne* or in the public interest.

In addition, the Company's proposal also places some onerous burdens upon Level 3 and 4 customers who have broken a payment agreement. If a Level 4 customer breaks a payment arrangement, the customer can only avoid termination by paying the *outstanding balance in full*. Chapter 56 Waiver Petition, Appendix A (Gyory) at 11-12. In other words, there would be no opportunity to cure the default and return to the terms of the payment arrangement. Level 3 customers would only be provided with a one time cure. *Id.*

⁹ PGW's request also implicates the state and federal constitutional rights to privacy. Pa.Const.Art. I, §§1, 8, and U.S. Const. Amendments IV and XIV. Pennsylvania case law regarding the freedom from disclosure of personal matters and freedom to make important decisions is particularly strong in this Commonwealth. *See, e.g., Denoncourt v. Commonwealth of Pa. State Ethics Comm'n*, 504 Pa. 191, 470 A.2d. 945 (1983).

OCA witness Colton testified that PGW's proposal commits the classic error of assuming a perfect correlation between the "ability to pay" of a customer with the "income" of a customer. OCA St. FCI-1 at 37. Mr. Colton noted that a person's reported level of income is not necessarily the sole indicator of one's ability to pay. This is especially true when it comes to the working poor. As OCA witness Colton testified:

Taking into account the "ability to pay" of the working poor should involve *more* than simply taking into account income level. The *stability* of income is one additional aspect of the ability to pay of the working poor. The negotiation of a payment plan for utility arrears should take into account the potential instability of income amongst the working poor as one aspect of ability to pay. Income for the working poor, in particular, can be erratic and unpredictable. A working poor customer may not *know* in April what his or her income is going to be in July or August, let alone in the following December or January. Periods of unstable wages may make payments that were reasonable in April unreasonable at a later date.

This income attribute of working poor households has been recognized in a variety of contexts. The instability of income has been found to be a barrier to effective budget counseling. The evaluation of one asset-building program, for example, reported that "staff and participants thought the budgeting worksheet ... became obsolete almost immediately because participants' incomes were very unstable." One major barrier to savings and asset accumulation by working poor households involves their "irregular incomes." One barrier to the long-term accumulation of assets has been found to be the "recurring crises," such as unemployment, which force working poor households to deplete their savings. Individuals have been found to view saving and systematic budget planning as not worthwhile because of the inability to predict income and labor-market conditions.

I found that working poor families tend to find themselves in lower quality hourly wage jobs, often marked by considerable income fluctuations due to the number of hours they are called upon to work. The Urban Institute quantified the types of occupations that characterize the working poor. Even aside from the level of wages, the presence of hourly wages and unpredictable hours mark occupations that are the province of the working poor.

I finally reported that families in the bottom quartile of income are significantly less likely to have access to paid sick leave, paid vacation leave, or flexible work schedules than families with higher incomes. More than three fourths (76 percent) of workers in the bottom quartile of family income lack regular sick leave; more than half (58 percent) do not have consistent vacation leave. Families in the bottom income quartile are more likely than other workers to lack *both* sick leave *and* vacation leave.

The lack of paid leave time may directly affect the ability of a working poor customer to maintain payments on a payment arrangement. A person working 35 hours a week on hourly wages may lose three days of work simply due to a sick child missing school and requiring care. If no leave time exists for that employee, the sick child translates into permanently lost wages. Personal illness, too, results in permanently lost wages, whether illness keeps a worker away from his or her job for a day, for two days, or for a week.

One of my primary recommendations in the NFFN report was to avoid the *one-strike-you're-out* payment plan structures now being requested by PGW.

OCA St. FCI-1 at 38-40 [footnotes omitted]. Not all income changes move a customer to a new BCS tier – but they can significantly lower income. A customer could suffer a decrease in income from 300% of the federal poverty level to 151%, which is a significant income drop that would affect that customer's ability to pay, but still does not result in a change in BCS income tiers. Additionally, PGW's proposal fails to account for any unanticipated circumstances that can arise, such as a health care crisis requiring significant medical expenditures or the need to bring on an additional member into the household, such as care for an elderly family member. The OCA submits that these changes can have a significant impact on the availability of income to meet all the necessities of life.

The Commission has recognized that some lower income people may experience income instability or additional unanticipated and necessary expenses, and that a payment arrangement should be modified where a person experiences a change in circumstances. *Frayne v. PECO Energy Co.*, Docket No. C-20029005 (Opinion and Order entered December 23, 2003). As

OCA witness Colton testified, working poor customers who face changed circumstances should have the opportunity to make that demonstration and negotiate a new payment arrangement based upon those changed circumstances. OCA St. FCI-1 at 41.

Action Alliance witness Geller testified about several important ways that PGW's proposal differs from the current *Frayne* standard:

- It eliminates any of the flexibility which is the keystone of Chapter 56;
- It transforms the standard enunciated in Frayne which allows the customer to obtain second payment agreements when there is a material change in circumstances, into a narrow and unforgiving standard, which would deny such a second agreement in many situations where there truly has been a material change in circumstances, which change has prevented the customer from being able to afford monthly payments on the original agreement;
- It establishes 'change of income' as the only standard permitted to be employed as a change of circumstance, while unjustifiably ignoring a host of other changes like change in expenses which would have an equal impact on ability to comply with a payment agreement;
- It limits even this single income standard to one in which the change must cause the customer to cross into a lower BCS Income Guideline level.

AA St. 1 at 22.

OCA witness Colton provided some specific recommendations that PGW should follow in establishing payment plans:

On the front-end, PGW should build check-points into the payment plans of working poor households with substantial arrears. Through such a process, PGW would break-up arrears above certain threshold amounts into multiple component parts. A payment arrangement for a \$400 arrears, for example, might be made subject to a payment plan for the first \$200 over a 3-month period. Upon successful completion of that plan, PGW would develop a payment plan for the next increment of arrears.

Subsequent to entering into a payment plan, PGW should provide for a revision to the payment plan should customer circumstances

change. With working poor households, in particular, as I discuss in detail above, this ability to revisit payment plan terms is important.

OCA St. FCI-1 at 41-42.

The OCA submits that adoption of these recommendations will result in more reasonable, affordable payment plans that are within the means of customers and fit within the requirements of Chapter 56. This will result in more consistent and timely payment patterns from customers. PGW's one-strike and you are out approach should be rejected and a more reasonable approach pursued.

f. 52 Pa.Code § 56.82 – Friday Terminations.

PGW is also seeking a waiver of Section 56.82 that prohibits Friday shut-offs for nonpayment of service. 52 Pa. Code § 56.82. PGW claims that this regulation was promulgated at a time when customers were not as able to pay bills on Fridays or Saturdays due to limited banking hours and lack of ATM machines. Chapter 56 Waiver Petition at 23. PGW estimates that this modification will result in a value of \$2.5 million. The prohibition on Friday shut-offs is also statutorily mandated in Section 1503 of the Public Utility Code. *See* 66 Pa. C.S. § 1503. The OCA recognizes that Section 2212(c) of the Public Utility Code allows the Commission to “suspend or waive the application to [PGW] of any provision of [the Public Utility Code], including any provision of this chapter other than [Section 2212].” 66 Pa. C.S. § 2212(c). The OCA submits, however, that granting a waiver of a statutorily mandated rule such as this requires even greater scrutiny than other Chapter 56 waiver requests.

The OCA submits that banking hours were not the only reason for the prohibition against Friday shut-offs. OCA witness Colton testified that customers turn to many sources when confronted with an imminent termination of utility service. Energy assistance – such as private fuel

funds or aid from community-based organizations – is an important asset for low-income households to avoid termination. OCA St. FCI-1 at 42-43. Many consumers facing termination turn to community advocacy organizations, social service agencies and state government for assistance. Many of these services would not be available over the weekend. *Id.* at 43-44. This is especially problematic where someone comes home from work late in the day on Friday to find that gas service has been terminated.

Another important purpose behind the Friday shut-off rule is the ability to avoid disconnection of service when a medical emergency exists. Obtaining a medical certification on a weekend may not be possible. OCA St. FCI-1 at 44. In addition, the Commission would not be available over the weekend. If a customer believes that he or she was unreasonably terminated, they would not be able to seek relief until the next business day. OCA St. FCI-1 at 44.

The OCA submits that all of these considerations must be weighed in determining whether to allow PGW to do Friday terminations. PGW has provided evidence that allowing Friday terminations would increase the number of field visits it does each week and that field visits often lead to collection of amounts owed. Chapter 56 Waiver Petition, Appendix A (Gyory) at 13. Therefore, allowing PGW to terminate service on Fridays might be considered, but only if PGW can demonstrate that customers will have access to the full range of services that are necessary to appropriately respond to the loss of natural gas service. OCA St. FCI-1 at 44-45.

g. 52 Pa. Code §§ 56.94, 56.95 – Waiver Of Certain Notice of Termination Provisions.

PGW requests a waiver of the personal contact immediately prior to termination provision and the subsequent 48-hour notice posting requirement if personal contact is not made immediately prior to termination. According to Chapter 56, PGW is required to provide termination

notice in three instances. First, pursuant to Section 56.91, PGW must provide written notice to the ratepayer at least 10-days prior to the date of the proposed termination; second, pursuant to Section 56.93, PGW must make personal contact with the ratepayer or a responsible adult occupant at least 3 days prior to termination of service; and, third, pursuant to Section 56.94, PGW must attempt to make personal contact in the same manner immediately prior to termination of service. *See* 52 Pa Code §§ 56.91, 56.93, and 56.94. If PGW does not make personal contact immediately prior to termination in accordance with Section 56.94, PGW must post a 48-hour termination notice in a conspicuous location at the ratepayers residence and the affected dwelling. 52 Pa. Code § 56.95.

PGW is requesting modification of Section 56.94 to give it discretion to personally contact a responsible person at the residence of the ratepayer immediately prior to termination. Chapter 56 Waiver Petition, Appendix A (Gyory) at 13-14. Furthermore, PGW is requesting waiver of 56.95, which requires the posting of a 48-hour termination notice at the residence of the ratepayer if personal contact was not able to be made. *Id.* at 5. PGW's modifications provide that the only prior personal contact required of PGW before termination is the personal contact requirement contained in Section 56.93.¹⁰ *Id.*

The OCA submits that these waivers should be denied. OCA witness Colton testified that elimination of the notice requirements requested by PGW eliminates the ability of the notice to perform its intended function:

As I explained in detail elsewhere, through a shutoff notice, a consumer should be provided with the information he or she needs to quickly and intelligently take available steps to prevent the threatened termination of service. However, additional functions can be served as well. For example, one *different* function of a shutoff notice is to

¹⁰ Section 1503 of the Public Utility Code requires personal contact *at least three* days prior to discontinuance of service. 66 Pa. C.S. § 1503(b)[emphasis added].

permit the customer to make alternative plans after service is, in fact, terminated. Consider, for example, that the right to receive notice does not depend upon the right to contest the disconnection of service. Regardless of whether the customers have a right to contest the discontinuance of service, they certainly have a right to know that service is being discontinued to enable them to protect themselves from damages that might occur.

OCA St. FCI-1 at 46. Mr. Colton testified about a host of consumer responses to a pending termination. These include:

- Signing up for a utility low-income program;
- Negotiating payment plans;
- Borrowing money from friends or family;
- Borrowing money from commercial institutions;
- Seeking pay advances;
- Rearranging other bills; and
- Requesting public assistance.

OCA St. FCI-1 at 47. These responses take time to pursue. A household might think that it can pay the amount due when it gets the ten day notice. *Id.* The later notice, however, serves the precise function for which it is intended – to notify the customer that time is running out and that final payment arrangements must be made or alternative living arrangements pursued. OCA St. FCI at 47-48.

Action Alliance witness Geller testified further about the importance of the 48-hour termination notice and its furtherance of Chapter 56's primary goals:

The 48 hour notice requirement is neither redundant nor without cost justification. Its elimination would dramatically affect a customer's ability to avoid shut-off. The thrust of Chapter 56 is to allow and in fact to encourage a series of communications between the company and the consumer for the purpose of promoting

payment, resolving differences, and avoiding loss of service. The 48 hour notice is provided at the most critical point in the relationship between the company and a payment troubled customer: the moment of intended shut-off. This is a point in which the company clearly has the customer's attention. PGW's proposal eliminates the last fair chance that the customer and the utility have to avoid service termination. It would eliminate the most significant opportunity for PGW to achieve all three of the goals of Chapter 56, i.e., promote payments, resolve differences, and avoid loss of service.

AA St. 1 at 29.

The OCA submits that these notice requirements provide important consumer protections. The ability to arrange services to help consumers cope with a loss of natural gas service is critical to protecting health and safety, and this notice requirement informs the customer that loss of service is imminent so that arrangements can be made. PGW has not demonstrated that waiving this requirement is appropriate.

h. Time Limits For Acting On Shutoff Notices.

PGW seeks to modify the BCS informal guideline requiring that a termination notice must lead to termination of service within 30 days of the notice if a customer does not enter into a payment arrangement to avoid shut-off. The purpose of this requirement is to prevent termination based upon "stale" notices. AA St. 1 at 27. PGW states that if termination does not occur within 30 days, PGW must begin the entire process again with another 30-day termination window.

OCA witness Colton sets forth a number of reasons why some time limit for acting on a shutoff notice should be set. OCA St. FCI-1 at 48-53. In order for a notice to be meaningful, it must give a clear and believable warning that termination is imminent. *Id.* at 50. If a utility sends out repeated shutoff notices without follow-up action, it destroys the message contained in the notice.

Id. As OCA witness Colton testified:

... a notice of discontinuance serves several different functions. As time passes subsequent to the initial issuance of the notice, the efficacy of the notice deteriorates. Eventually, at some point after the final notice of discontinuance is issued, if no action has occurred, the purpose of the notice is no longer served. Since the passage of time makes the initial notice void, it is as though the initial notice had not been issued in the first place. Under these circumstances, a new notice must be issued. Accordingly, the new notice must be issued using the same procedures as the initial notice with the proper amount owed.

OCA St. FCI-1 at 50-51. In addition, sending out empty threats of termination adds to administrative costs for the utility. *Id* at 52.

The OCA recognizes, however, the number of shutoff notices that PGW must deal with each year. In this limited circumstance, some relaxation of the BCS informal guideline such as the 60 day time limit suggested by the Company, might be appropriate. The OCA suggests that such a waiver might be appropriate for a limited 24-month pilot program. At the end of the 24 month pilot program, PGW should be required to demonstrate that this waiver request resulted in a material improvement in the PGW disconnect process without substantial offsetting harm to consumers.

This waiver, however, must be accompanied by the condition that the customer can stop the termination by paying the amount in arrears stated on the original notice, or entering into a payment arrangement for that amount. At the evidentiary hearings, PGW witness Gyory provided an assurance that only the noticed amount would be required to be paid in order to avoid termination. Tr. 671-672. The OCA submits that this is an important condition to be imposed if the Commission considers granting this waiver request on a temporary basis. The amount the customer owes to avoid termination should not become a moving target as time passes simply because PGW cannot complete the termination process in a timely manner.

i. 52 Pa. Code § 56.191 – Time Limitations For Restoration of Service After Terminations.

PGW's final waiver request seeks to extend the time limit for restoration of service after a termination has occurred. Section 56.191 requires service to be restored by the end of the first full working day after payment plus a reasonable reconnection fee has been received. 52 Pa.Code §56.191. PGW proposes that during the time period from April 1 through November 30, the requirement be extended from one day to seven days for restorations that require "dig ups." For restorations that do not require "dig ups," PGW is proposing to extend the requirement from one day to three days. Chapter 56 Waiver Petition at 24, Appendix A (Gyory) at 15-17. In the case where a termination was made in error, PGW will restore service within 24 hours. Chapter 56 Waiver Petition at 25.

The OCA is concerned that allowing a seven-day period to restore service could present serious health and safety concerns, particularly in the months of November and April. OCA St. FCI-1 at 55. However, given PGW's unique circumstances, the OCA agrees that the current one-day requirement may be too stringent. The OCA agrees that some extension of the time to restore service in situations which require a "dig-up" is reasonable. However, seven days is too long a period. There is also no need to extend the time for restoring service where the property has a curb box.

OCA witness Colton had one further observation about this issue. If the Company must go out and dig-up a property to terminate service, it should install a curb box, if practical, at that time. OCA St. FCI-1 at 54. This will make restoration of service less burdensome and eliminate the need to do "dig-ups" to restore service after a termination has occurred. *Id.*

B. Universal Service Issues.

The Commission's June 2 Order also directed that PGW's level of universal service costs as well as the cost effectiveness and management of these programs be investigated. *June 2 Order* at 5. In her Direct Testimony in the Investigation Proceeding, PGW witness Coltro described the two primary universal service programs offered by PGW: (1) Customer Responsibility Program ("CRP") and (2) the Conservation Works Program ("CWP"). The CRP program is a percentage of income Customer Assistance Program ("CAP"). PGW St. CP-2 at 13. The CWP program is PGW's Low Income Usage Reduction Program ("LIURP"). *Id.* at 15.

PGW witness Coltro testified that PGW's CRP currently has approximately 65,000 participants. PGW St. CP-2 at 14. She testified that it would not be appropriate to reduce the size of the CRP program given the number of low-income customers in PGW's service territory and the possible increase in bad debt expense that would occur if the CRP program were reduced in size. *Id.* Ms. Coltro did note, however, that a review and revision to the program may be necessary given the increased cost of the program due primarily to the dramatic increase in gas costs. *Id.* at 13. However, due to the expedited nature of this Investigation Proceeding, PGW was unable to present a proposal at this time. PGW intends to conduct a full review of the program and make a proposal to the Commission on a potential new program design for CRP. *Id.*

OCA witness Colton testified that at the time of the Company's Restructuring Proceeding, certain program design changes were made to CRP. For instance, prior to restructuring, the CRP required participants to pay 7.35% of their income toward their PGW bills. In its Restructuring Proceeding, the household percentages were adjusted to 8%, 9% and 10% depending upon what level of the Federal Poverty Level the customer lived. Thus, the restructuring itself did not impose any additional costs upon the Company. OCA St. FCI-1 at 55-56. The OCA recognizes,

however, that increased natural gas costs are imposing increased program costs on PGW – as well as other Pennsylvania natural gas utilities. *Id.* at 55. Unfortunately, the time provided for in this proceeding, and the lack of a proposal from the Company itself, precluded the OCA from developing any specific recommendations at this time. *Id.* at 56.

In his Direct Testimony, OSBA witness Knecht makes two specific recommendations with regard to PGW’s CRP program. The first is that the CRP program be capped at 60,000 participants to prevent program costs from *climbing any higher*, until such time as a full program review can be conducted. OSBA St. 1 at 6. In the alternative, Mr. Knecht proposes that if the Commission does not approve a cap on CRP enrollment, that any incremental costs incurred for program participation above the 60,000 participant level be allocated solely to residential customers through a “CRPA” surcharge. *Id.*

The OCA submits that both of the OSBA recommendations should be rejected. OSBA witness Knecht has established no reason why the CRP program should be capped at 60,000 customers. He acknowledges in his testimony that this number is arbitrary. OSBA St. 1 at 6. OCA witness Colton testified about why OSBA’s proposed cap on CRP participation should be rejected:

Mr. Knecht’s concern for a cap on program participation also seems to stem from some unfounded assumptions. Consider that:

- Mr. Knecht states that “if all eligible customers were to enroll in the CRP, PGW’s ratepayers would face a USC increase of some \$30 million, or about 60 cents per MCF.” (Knecht, at page 6). It is unreasonable to base decisions on what might happen if *all* eligible customers were to enroll in any particular program. There is not a low-income rate affordability program that I am aware of that has a participation rate even approaching 100% of those customers that are eligible.

- Mr. Knecht states further that the level of rates charged to CRP customers is not sufficient to recover even the short-run marginal costs of providing gas service. *I agree that such an analysis should be performed, but he provides no empirical analysis to support his conclusion. In the original 1992-1993 proceeding in which Ms. Happy Fernandez reached the conclusion (on behalf of the Philadelphia Gas Commission) that the CRP customers covered their short-run marginal costs, her analysis considered much of what the PUC requires in its CAP Policy Statement, including an estimate not only of the magnitude of the CRP credits directly provided to participants, but of the offsetting expense savings. There is absolutely no basis to determine, based on the information now available, whether CRP participants cover their short run marginal costs or not.*

OCA St. FCI-1R at 1-2.

The OCA also submits that a cap on enrollment would be inconsistent with Section 2203(6) of the Natural Gas Choice and Competition Act that requires universal service programs to be available and appropriately funded. 66 Pa.C.S. §2203(6). As OCA witness Colton testified:

Placing an arbitrary cap on CRP participation would be inconsistent with the needs assessment that has been prepared by PGW and submitted to the PUC. To cap CRP participation below the acknowledged needs as determined by the Company's own needs assessment could create a program that is neither available nor adequately funded as required by statute.

OCA St. FCI-1R at 3.

The OSBA also recommended that if there is no cap on enrollment, that incremental costs for a program above 60,000 participants should be allocated solely to residential customers through a surcharge mechanism. OSBA St. 1 at 6. The OCA submits that this is inconsistent with the Commission's determination in the Restructuring Proceeding that universal service costs should

be allocated to all customer classes. OCA St. FCI-1R at 3. Furthermore, such an allocation would only exacerbate the unaffordability of residential ratepayers' bills.

The OCA does not oppose a comprehensive evaluation of PGW's CRP program given the high commodity costs of natural gas. However, such an evaluation would take more time than was provided during this investigation. The OCA would welcome such an inquiry and looks forward to working with PGW and other interested parties on addressing these issues in a manner that ensures that low-income programs remain available and appropriately funded, without imposing an unreasonable burden upon other ratepayers.

C. Commonwealth Court Remand Issues.

1. Introduction.

The *June 2 Order* also consolidated tariff issues relating to PGW's restructuring proceeding at Docket No. M-00021612. These issues were on appeal to the Commonwealth Court but were remanded to the Commission by agreement of the appeal participants for further record development. The specific issues related to Section 2.4.C.6 of PGW's *Compliance Tariff*, which allowed PGW to reject an application for gas service if the applicant failed to enter into a payment agreement for an outstanding lien or judgment and Section 5.14 of PGW's *Compliance Tariff*, which assesses a field charge of \$10.00 when PGW makes a field visit for termination of service. Gas Tariff - Pa. P.U.C. No. 2 at 18 and 36 ("*Compliance Tariff*").

On October 10, 2003, the Commission entered its *Compliance Order* and required PGW to remove these provisions from its tariff. *Pa.P.U.C. v. Philadelphia Gas Works*, Docket No. M-00021612, (Order entered October 10, 2003) ("*Compliance Order*") With regard to the above tariff provisions, the Commission stated:

2.4.C.6 - This section allows PGW to reject an application from a customer who fails to enter into payment agreement for an outstanding lien or judgment. This is contrary to Commission case history and policy that requires a company to keep court-ordered liens and judgments separate from the customer's utility billing. PGW should collect lien and judgment amounts through the legal process, and thus this provision shall be deleted from the tariff.

* * * *

5.14. Residential Field Charge - The costs of field visits are recovered through late payment charges, and the Company is permitted to assess a reconnection fee. PGW shall not collect an additional charge for field visits that are part of the collection process.

Compliance Order at 7.

On October 27, 2003, PGW filed a Petition for Reconsideration of the Commission's *Compliance Order* to which the OCA filed an Answer on November 6, 2004. On November 10, 2003, PGW also filed a Petition for Review of the *Compliance Order* with the Commonwealth Court taking issue with the Commission rulings above. These tariff issues were remanded to the Commission for further hearings pursuant to a Joint Application for Remand filed by PGW and the Commission on March 23, 2004.

On May 14, 2004, a Secretarial Letter was issued requiring the Office of Administrative Law Judge to set the remand issues for further hearing before the Commission. The Secretarial Letter provided that the following requests by PGW will be heard:

PGW has requested that the Commission approve a \$10 residential visit field charge and a requirement that applicants for service with existing civil judgments against them for unpaid PGW balances be required to enter in to payment arrangements as a condition for service.

Pa.P.U.C. v. Philadelphia Gas Works, Docket No. M-00021612 (May 14, 2004 Secretarial Letter).

As noted above, the Commission's *June 2 Order* consolidated these remand issues into the instant Investigation Proceeding. The OCA submits that PGW has not provided the requisite evidence to support inclusion of these provisions in its tariff. As the OCA argued in the restructuring proceeding, PGW has not provided cost support for the expanded residential field service charge. OCA St. No. 4 at 27. PGW still has provided no evidence as to the cost basis for the field charge for termination of service. As to the judgment and lien provisions, the OCA submits that the Commission may not have jurisdiction to enforce judgments and liens entered by a civil court. If the Commission were to approve such a provision, however, certain conditions must be established for the implementation of such a process.

2. **Compliance Tariff Provision 2.4.C.6 - Judgments And Liens.**

Section 2.4.C.6 of PGW's proposed *Compliance Tariff* allowed PGW to reject an application for service if a customer does not enter into a payment agreement for an outstanding lien or judgment related to PGW service. PGW uses the lien process against delinquent customers who own the property for which gas service was provided pursuant to the Municipal Claim and Tax Lien Act at 53 Pa.C.S. §§ 7171 *et. seq.* See PGW St. No. CP-1 at 13. PGW uses the civil judgment process against customers who do not own property for which gas service was provided for past due balances that exceed \$300.00. *Id.* A court of general jurisdiction, not the Commission, enters the lien or judgment against these customers. Through its tariff, PGW now seeks to collect on these liens and judgments through the Commission process.

The Application and Contract for Gas Service section of PGW's proposed *Compliance Tariff* contained the following provision:

2.4.C Other Reasons for Rejecting an Application. PGW may also reject requests for Gas Service for any of the following reasons:

* * * *

2.4.C.6. The Applicant fails to enter into a payment agreement for an outstanding lien or judgment of record in favor of PGW and against the Applicant.

In the *Compliance Order*, the Commission ruled that PGW cannot reject an application for service based on civil judgments and liens for past unpaid balances. *Compliance Order* at 5. In that Order, the Commission stated “PGW should collect lien and judgment amounts through the legal process, and thus this provision shall be deleted from the tariff.” *Id.* The Commission further noted that the process proposed by PGW is contrary to Commission precedent. *Id.*

In the Investigation proceeding, PGW witness Randy Gyory again requests that PGW be allowed to reject an application for service if a customer does not enter into a payment agreement for an outstanding lien or judgment related to PGW service. PGW witness Gyory argues that without this provision, PGW will be required to execute through the courts on PGW’s liens and judgments against customers, which is costly and time-consuming. Where there is a lien in place, Mr. Gyory testified that this would require PGW in most instances to seize a person’s residence. PGW St. CP-1 at 12-13. According to Mr. Gyory’s testimony, PGW is willing to adhere to the payment arrangement parameters that would apply to non-judgment and non-lien arrearages. *Id.*

Through this request, PGW is asking the Commission to collect a judgment or lien imposed by a civil court. The Commission and the Courts have held that the Commission has no jurisdiction to enforce the collection of a judgment or lien. In a recent Commonwealth Court case, the issue was raised of whether the Commission could order a payment plan (requested by the ratepayer) for a debt – a large portion of which was a civil judgment. *Gasparro v. Pa. P.U.C.*, 814 A.2d 1282, 1284 (Pa. Cmwlth. Ct. 2003). The Commission had concluded that an action for

collection of the debt belongs in a court of general jurisdiction. *Id.* The Commonwealth Court agreed. The Court stated, “at this point ... [the utility] is moving to collect on its judgment, an issue over which the PUC does not have jurisdiction.” *Gasparro* at 1285. The Commonwealth Court case law suggests that once PGW obtains a lien or judgment against a person’s property, PGW cannot use the Commission process to collect on that lien or judgment.¹¹

If, however, the Commission decides it has jurisdiction to allow PGW to collect judgments and liens through Commission processes, certain conditions must apply. First, the OCA agrees with PGW that the Commission must not allow PGW to collect on a judgment or lien for arrearage amounts that are beyond the four-year window from the date PGW receives the application for service. PGW St. No. CP-1 at 14. Second, the OCA agrees with PGW that it must not seek to enforce the judgment or lien on its own, once a payment arrangement is achieved. Third, PGW must agree to provide service once a payment arrangement is agreed upon for the appropriate arrearage amount. Fourth, PGW should be directed to develop and submit a plan or procedures as to how it will coordinate its collections through a payment arrangement with the civil court in order to track reduction in the outstanding judgment or lien amount and final satisfaction of the lien or judgment.

The OCA submits that conditioning service on payment or enforcement of an outstanding lien or judgment may not be within the Commission’s jurisdiction. If the Commission, however, decides to allow PGW to include this provision in its tariff, the OCA submits that certain limitations should be imposed upon PGW as set forth above.

¹¹ The Commission has previously determined that it cannot rule on the validity of a municipal lien because such a dispute does not involve a law, regulation, or Order that the Commission has jurisdiction to administer. *Strowder v. Philadelphia Gas Works*, Docket No. C-20028036, 2002 WL 32069511, at *2 (Pa. P.U.C. Dec. 30, 2002).

3. PGW's Compliance Tariff 5.14 - Residential Field Charge.

As noted above, the Commission also rejected an additional charge for field visits that are part of PGW's collection and termination process. *Compliance Order* at 7. The Termination and/or Discontinuance of Gas Service section of PGW's *Compliance Tariff* contains the following provision:

5.14 Residential Field Charge. When PGW makes a field visit at the service address, pursuant to the Company's rules regarding Termination of Service (Section 5.3), PGW will assess a field charge of \$10.

Section 5.3 of PGW's *Compliance Tariff* pertains to termination procedures, including notices for termination.

Initially, the OCA would note that in PGW's restructuring proceeding the OCA raised the issue of the cost basis for this charge in the direct testimony of Barbara R. Alexander. Ms. Alexander testified as follows:

PGW has ... included another proposed fee in its revisions that is not authorized by Chapter 56. PGW proposes a \$10 Field Collection Charge, payable when PGW visits the dwelling to effectuate contact and termination of service. * * * PGW justifies this new charge on the basis that UGI's tariff allows such a charge, but UGI's tariff only allows a \$7 charge when the customer pays the collector to avoid termination of service. As a result, PGW's proposal would significantly increase the basis for the charge. Furthermore, the complete lack of explanation as to the basis for this charge or how customers would be informed in advance of their liability for this charge is disturbing.

OCA St. 4 at 27. The OCA raised this concern again in its Comments to PGW's *Compliance Tariff* as follows:

Tariff Rule 5.13 imposes a restoration field charge of \$10 when PGW makes a field visit to a dwelling to effectuate contact and termination of service. This charge is not authorized by Chapter 56 and imposes

additional financial burdens on customers who are already in arrears. PGW justifies this new charge on the basis that UGI's tariff allows such a charge, however, UGI's tariff allows a \$7 charge when the customer pays the collector to avoid termination of service. Under PGW's proposal, a customer could incur several \$10 charges if more than one field visit relating to termination of service is necessary. Tariff Rule 5.13 should be removed or limited only to the situation where the field personnel accepts payment to avoid termination of service.

OCA Compliance Comments at 12.

In the *Compliance Order*, the Commission denied inclusion of the above provision in PGW's tariff, reasoning that "[t]he costs of field visits are recovered through late payment charges, and the Company is permitted to assess a reconnection fee." *Id.* The Company disagrees that this fully recovers its costs but the Company has not explained how much of its costs would need to be recovered by the fee, nor has the Company demonstrated that the costs of termination visits are not recovered through other expense allowances in its base rates.

For the reasons set forth above, the OCA submits that the Commission correctly rejected the inclusion of the expanded residential field charge for termination visits in PGW's *Compliance Tariff*.

4. Conclusion.

For the reasons set forth above, PGW's requested tariff provisions at Section 2.4.C.6 and 5.14 should be rejected as proposed. To the extent the Commission decides to approve these provisions, approval should be subject to the conditions and limitations set forth by the OCA above.

D. Senior Citizen Discount.

The other issue that was consolidated into this Investigation Proceeding was PGW's proposed Senior Citizen Discount. *June 2 Order* at 3-4. The OCA has supported the proposed

means-tested Senior Citizen Discount as a reasonable compromise between balancing the costs of continuing the SCD program with the City Council's stated desire to provide assistance to Philadelphia's senior citizen population.

The OCA submits that the means test will serve to allocate assistance resources to those who are most in need. Senior citizens who are eligible for the CRP-CAP program may receive a discount from that program or alternatively, if it would be more beneficial, they could receive the Senior Citizen Discount instead. The OCA submits that those individuals between 151-250 percent of the federal poverty level would significantly benefit because they would not otherwise be eligible for any CRP-CAP discount. The City Council's Ordinances express that there is a need for senior citizens within the 151-250 percent of the federal poverty level to receive some form of assistance, and PGW's proposal would allocate resources to those customers who are in need of assistance.

The OCA also submits that the proposed means-tested SCD program is consistent with the provisions of 66 Pa.C.S. § 2212(r), which gives to the Commission the authority to approve a senior discount program for a city natural gas distribution company as long as the rates and terms of such a program are just and reasonable.

III. CONCLUSION

The OCA has offered several viable alternatives to PGW's proposed Chapter 56 waivers. The OCA submits that while certain waivers of Chapter 56 may be acceptable, a majority of PGW's proposed waivers would strip consumers of important protections and could lead to serious public health and safety concerns. For the reasons set forth above, PGW's Chapter 56 Waiver Petition should be denied in substantial part. To the extent the Commission grants any of

the requested waivers, it should do so with the necessary conditions to ensure that consumers are adequately protected.

The OCA also submits that the Commission should continue the investigation into PGW's universal service program costs and cost-effectiveness. Such programs provide vital assistance to the most vulnerable customers of PGW.

In addition, the two PGW compliance tariff items that were remanded from the Commonwealth Court should be rejected as proposed. These tariff provisions should not be approved until such time as PGW provides adequate support for these proposals and only if the conditions set forth above are attached.

The OCA also respectfully requests that the proposed means-tested Senior Citizen Discount be approved. This means-tested proposal recommends a reasonable compromise between balancing the costs of continuing the program with the City Council's stated desire to provide assistance to Philadelphia's senior citizen population and is consistent with the Natural Gas Choice and Competition Act.

Respectfully submitted,



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Dated: July 16, 2004

APPENDIX A

PROPOSED FINDINGS OF FACT

1. According to the Bureau of Consumer Services' 2003 Cold Weather Survey Results for Natural Gas Companies, 4,567 households in PGW's service territory were without service during the 2003 winter heating season. OCA Cross-Exh. FCI-2.
2. According to the Bureau of Consumer Services' 2003 Cold Weather Survey Results for Natural Gas Companies, 918 PGW customers were using potentially unsafe heating sources, including kerosene heaters, kitchen stoves, and oil-filled space heaters. OCA Cross Exh. FCI-2.
3. A four person household in Pennsylvania (two adults with two children) would need, on an after-tax basis, \$34,069 a year (1999\$) to maintain a subsistence budget. OCA St. No. FCI-1 at 22.
4. According to a PathWaysPA report for self-sufficiency standards in Pennsylvania in 2001, a three person household (one adult, one preschooler, one school age child) would require a monthly wage of \$3,156 (an annual wage of \$37, 872) to be self-sufficient in Pennsylvania, which is nearly 260% of the 2001 Federal Poverty Level. OCA St. No. FCI-1 at 23.
5. According to a PathWaysPA report for self-sufficiency standards in Pennsylvania in 2001, a four person household (two adults, one preschooler, one school age child) would require a monthly wage of \$3,567 (an annual wage of \$42,804) to be self-sufficient in Pennsylvania, which is more than 240% of the 2001 Federal Poverty Level. OCA. St. No. FCI-1 at 23.
6. The 2001 poverty level for a four-person household was \$17,650. OCA St. FCI-1 at 23.
7. Since PGW has been brought under the jurisdiction of the Commission Chapter 56 regulations on September 1, 2003, its collections rate has been increasing. OTS St. 2 (Mick) at 6.
8. PGW's collections rate for the 12 months ending March 2004 was approximately 90.5%. PGW St. CRRC-1R at 15.
9. PGW is projecting a collections rate of 93% at the end of the current fiscal year on August 31, 2004. PGW St. CRRC-1R at 15.
10. Each percentage change in the collections rate results in an \$8 million dollar increase in the Company's cash reserves. PGW St. CRRC-1R at 2.
11. Uncollectible expense is largely within the control of PGW's management. OCA St. 1 at 15.

12. PGW will conclude the current fiscal year on August 31, 2004 with \$31 to \$36 million in cash reserves. PGW St. CRRC-1R, Sch. JRB-10, Tr. 323.
13. The use of EFT payments as a condition of entering into a payment arrangement for customers with income at or above 250% of the Federal Poverty Level would enhance PGW's collections and improve its financial condition. OCA St. FCI-1 at 10-11.
14. The use of mandatory budget billing would lead to improvement in the Company's cash flow by generating pre-payments of winter revenue. OCA St. FCI-1 at 14.
15. The use of credit scoring will enhance the efficiency of PGW's credit and collections activities. OCA St. FCI-1 at 34-35.
16. Level 3 and Level 4 customers do not qualify for PGW's universal service programs or other social programs. OCA St. FCI-1 at 22-24.
17. The overwhelming number of persons without bank accounts are those in the lower income ranges. OCA St. No. FCI-1 at 24.
18. Four out of five "unbanked" consumers have incomes below \$25,000. OCA St. No. FCI-1 at 24.
19. Lower-income households that do not have bank accounts frequently have insufficient savings to make a substantial lump sum payment to a utility in order to restore service. OCA St. No. FCI-1 at 24.
20. BCS Levels 3 and 4 customers cover a wide range of household incomes. AA St. 1 at 11.
21. BCS Levels 3 and 4 customers are not immune to cash flow problems resulting from loss of job, sudden disability, domestic discord, etc. AA St. 1 at 11.
22. BCS Level 3 customers include households that are close to being universally recognized as "low income" for energy assistance purposes. AA St. 1 at 11.
23. BCS Level 3 customers have incomes that are insufficiently stable to allow them to meet their living expenses without occasional disruption. OCA St. FCI-1 at 24-25.
24. PGW has not made a request to the Commission to conduct a winter termination. AA St. 1 at 26.
25. The purpose of a deposit is to protect PGW against default by an applicant who is a demonstrated credit risk. AA. St. 1 at 15.
26. There is no perfect correlation between a customer's ability to pay and a customer's income. OCA St. FCI-1 at 38-40.

27. PGW's CRP currently has approximately 65,000 participants. PGW St. CP-2 at 14.
28. Prior to restructuring, the CRP required participants to pay 7.35% of their income toward their PGW bills.
29. In the restructuring proceeding, the household percentages were adjusted to 8%, 9% and 10% depending upon the Federal Poverty Level of the customer.
30. PGW uses the lien process against delinquent customers who own the property for which gas service was provided. PGW St. No. CP-1 at 13.
31. PGW uses the civil judgment process against customers who do not own property for which gas service was provided for past due balances that exceed \$300.00. PGW St. No. CP-1 at 13.
32. A court of general jurisdiction enters the lien or judgment against customers who are delinquent in payment of their bill for gas service.

CONCLUSIONS OF LAW

1. Granting the proposed Chapter 56 waiver requests will result in PGW failing to provide or maintain adequate, efficient, safe and reasonable service and facilities that is reasonably continuous and without unreasonable interruption or delay pursuant to 66 Pa. C.S. § 1501.
2. Granting the proposed Chapter 56 waiver requests will result in PGW failing to, at a minimum, maintain customer service and consumer protections and policies for retail gas customers at the same level of quality under retail competition as in existence on the effective date of Chapter 22 pursuant to 66 Pa. C.S. §2206(a).
3. Compliance with the Chapter 56 provisions from which PGW is seeking a waiver does not result in an unreasonable hardship to a person or a utility. 52 Pa. Code § 56.222(a).
4. PGW request for Chapter 56 waivers fails to adequately balance consumer protection rights with PGW's financial integrity. June 2 Investigation Order at 5 n.2.

PROPOSED ORDERING PARAGRAPHS

1. **IT IS HEREBY ORDERED** that PGW should pursue the use of Electronic Funds Transfer for customers on payment arrangements with incomes at or above 250% of the Federal Poverty Level.
2. **IT IS HEREBY ORDERED** that PGW should pursue implementation of a mandatory budget billing for all residential customers.
3. **IT IS HEREBY ORDERED** that PGW implement a credit scoring pilot program similar to the programs currently utilized by other Pennsylvania utilities.
4. **IT IS HEREBY ORDERED** that PGW's request for waiver of 52 Pa. Code § 56.191 is **DENIED**.
5. **IT IS HEREBY ORDERED** that PGW's request for waiver of 52 Pa. Code § 56.100 is **DENIED**.
6. **IT IS HEREBY ORDERED** that PGW's request for waiver of 52 Pa. Code § 56.32 is **DENIED**.
7. **IT IS HEREBY ORDERED** that PGW's request for waiver of 52 Pa. Code § 56.53 is **DENIED**.
8. **IT IS HEREBY ORDERED** that PGW's request for waiver of 52 Pa. Code § 56.97 is **DENIED**.
9. **IT IS HEREBY ORDERED** that PGW's request for waiver of 52 Pa. Code § 56.82 is **DENIED** until such time that PGW can demonstrate that customers will have access to the full range of services that are necessary to appropriately respond to the loss of natural gas service.
10. **IT IS HEREBY ORDERED** that PGW's request for waiver of 52 Pa. Code §§ 56.94 and 56.95 is **DENIED**.
11. **IT IS HEREBY ORDERED** that PGW's request to modify the Bureau of Consumer Services informal guidelines that a termination notice must lead to termination of service within 30 days of the notice if a customer does not enter into a payment arrangement to avoid shut-off is **GRANTED** subject to the condition that PGW allows the customer to stop termination by paying the amount in arrears stated on the original notice or by entering into a payment for that amount.

12. **IT IS HEREBY ORDERED** that PGW's request for waiver of 52 Pa. Code §191 relating to the time limit for restoration of service should be **GRANTED** for situations that require a "dig-up" and a reasonable number of days to restore service should be imposed.
13. **IT IS HEREBY ORDERED** that the Office of Small Business Advocate's request that PGW's CRP be capped at 60,000 customers is **DENIED**.
14. **IT IS HEREBY ORDERED** that OSBA's request to implement a CRPA is **DENIED**.
15. **IT IS HEREBY ORDERED** that PGW's requested tariff provision allowing PGW to reject an application for service from a customer who fails to enter into a payment agreement for an outstanding judgment or lien for past due PGW utility service is **DENIED**, unless the Commission determines it has jurisdiction over such collection. In such an instance, PGW is prohibited from collecting on a judgment or lien for arrearage amounts that are beyond a four-year window; PGW is prohibited from enforcing the judgment or lien on its own, once a payment arrangement is achieved; PGW must provide service once a payment arrangement is agreed upon for the appropriate arrearage amount; and PGW must develop and submit procedures to the Commission as to how it will coordinate its collections a payment arrangement with the civil court in order to track reduction in the outstanding judgment or lien amount and final satisfaction of the lien or judgment.
16. **IT IS HEREBY ORDERED** that PGW's requested tariff provision relating to the imposition of a \$10.00 residential field visit charge relating to termination of service procedures is **DENIED** unless PGW can provide evidence as to the cost basis of such provision.

CERTIFICATE OF SERVICE

Re: Investigation into Financial :
Collections Issues Regarding the : Docket Nos. P-00042090
Philadelphia Gas Works : R-00049157
: M-00021612
: P-00032061

I hereby certify that I have this day served a true copy of the foregoing document, Office of Consumer Advocate's Main Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 16th day of July, 2004.

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July 23, 2004

James J. McNulty, Secretary
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VIA HAND DELIVERY

**Re: Pennsylvania Public Utility Commission v. Philadelphia Gas Works;
Docket Nos. M-00021612; P-00042090; R-00049157; P-00032061**

Dear Secretary McNulty:

Please be advised that the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG") will not be submitting a Reply Brief in the above-referenced proceeding. PICGUG reserves the right, however, to file Exceptions or Reply Exceptions, as necessary.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this transmittal letter and kindly return it for our filing purposes.

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Very truly yours,

MCNEES WALLACE & NURICK LLC

By *Charis Mincavage*
Charis Mincavage

Counsel to the Philadelphia Industrial and
Commercial Gas Users Group

CM:lhe

Enclosures

c: Administrative Law Judge Charles E. Rainey, Jr. (via fax and first class mail)
Certificate of Service

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

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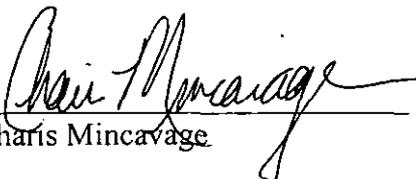
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Charis Mincavage

Dated this 23rd day of July, 2004, in Harrisburg, Pennsylvania.



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

July 23, 2004

ORIGINAL

James J. McNulty, Secretary
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Re: Pennsylvania Public Utility Commission
v.
Philadelphia Gas Works
Docket Nos. M-00021612; P-00042090;
R-00049157; P-00032061

Dear Secretary McNulty:

Enclosed for filing please find an original and nine (9) copies of the Office of Trial Staff's Reply Brief in the above-captioned proceeding.

Copies are being served on all active parties of record.

Sincerely,

Richard A. Kanaskie
Prosecutor
Office of Trial Staff

RAK:las

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation into Financial and : Docket No. P-00042090
Collections Issues Regarding the : R-00049157
Philadelphia Gas Works : M-00021612
: P-00032061

REPLY BRIEF
OF THE
OFFICE OF TRIAL STAFF

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Johnnie E. Simms
Senior Prosecutor

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Office of Trial Staff
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Utility Commission

P.O. Box 3265
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Dated: July 23, 2004

DOCKETED
JUL 26 2004

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I. INTRODUCTION

On July 16, 2004, the Office of Trial Staff (“OTS”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), Action Alliance of Senior Citizens, ACORN and Tenants’ Action Group (“Action Alliance”), Philadelphia Public Officials (“PPO”) and Philadelphia Gas Works (“PGW”) filed Main Briefs in accordance with the established Procedural Schedule. OTS’s Main Brief set forth the evidence and rationale to support the testimony and exhibits of Ms. Janice Hummel and Messrs. Charles T. Weakley, Daniel Mumford and David G. Mick.

OTS’s Reply Brief is limited to those matters raised by the other parties’ Main Briefs not specifically addressed by OTS in its Main Brief and to those matters previously addressed by OTS, but which require additional discussion as a result of the other parties’ Main Briefs. For ease of review, OTS will herein use the same headings as utilized in its Main Brief.

Issues not addressed in this Reply Brief are not deemed to be waived or admitted as they have been adequately presented in prior documents and need not be repeated. Accordingly, for your convenience, we have used the same alphabetical headings as provided in your Prehearing Order and as shown in our Main Brief.

II. REPLY ARGUMENTS

A. Senior Citizen Discount Program

A number of parties in their respective Main Briefs have presented positions that are not supported by the record evidence in this proceeding. Particularly, in the case of PGW there are conflicting arguments actually presented in their Main Brief between its request for SCD and a waiver of certain Chapter 56 provisions. For ease of reference, OTS will address each of the opposing parties' Main Briefs relative to their respective positions on SCD in an enumerated fashion.

1. Action Alliance-SCD Argument

On page 48 of its Main Brief, Action Alliance argues that the record establishes that the incremental burden of the modified senior citizen discount on PGW ratepayers is *de minimis*. Action Alliance, in its Main Brief, continues its failure to give credence to the full record evidence by arguing as follows:

Action Alliance submits that those answers were accurate, were more fully developed during the July 6, 2004 hearing, and were not seriously controverted by any party.¹

Action Alliance's self-serving declaration that PGW Statement CP-2 and Exhibits CC/CP-1 and CC/CP-2 were not "seriously controverted by any party" is totally incorrect, as even Your Honor had PGW witness Coltro acknowledging that the \$365,000 figure would be adding of that cost each year, which was not presented

¹ Action Alliance Main Brief at 48.

in her direct testimony.² OTS respectfully submits that Action Alliance's Main Brief completely overlooks the testimony of OTS witness Weakley and the cross-examination of PGW's witness Coltro.³ In that regard, the following is a few examples of the record evidence that Action Alliance has overlooked in its assessment that positively controverts the evidence relied upon by Action Alliance in discussing the SCD issue:

- 1) The \$365,421 represents the incremental discount costs associated with an average annual enrollment of 1309. Tr. 616-617.
- 2) PGW failed to consider that the costs of SCD Program are cumulative over time. OTS St. No. 1 at 15.
- 3) The \$365,000 is what PGW estimated the cost to be in the first year of the program. Tr. 615.
- 4) PGW acknowledge that the \$365,000 figure would be adding of that cost each year. Tr. 615.
- 5) Assuming reliance on PGW's linear assumption, the incremental discount cost in year 2 will be \$732,842, which represents the \$365,421 from the combined participation of year 1 plus the \$365,421 from the additional 1309 enrollment in year 2. OTS St. No. 1 at 19.
- 6) The best evidence of the increasing costs associated with reopening the SCD Program to include means-tested senior citizens is PGW Exhibit – CP/CC -2, which was reproduced as OTS Exhibit No. 1, Schedule 1.
- 7) OTS Exhibit No. 1, Schedule 1 reveals for example that in year 2005, the cost of the grandfathered SCD (column 5) is \$19,633,644 and the cost for a reopened means-tested

² Tr. 615.

³ OTS St. No. 1 and OTS Exhibit No. 1; Tr. 612-644.

SCD (column 4) is \$20,838,373, which represents a difference of \$1,204,709. The figure of \$1,204,709 represents the additional costs associated with the reopening the SCD Program to include means-tested senior citizens. OTS Exhibit No. 1, Schedule 1.

- 8) As illustrated by OTS Exhibit No. 1, Schedule 1, by simply subtracting column 5 from column 4 in each of the years produces an increase every year to the year 2020 for a total additional discount cost of \$60,838,979 by reopening the SCD Program to include means-tested senior citizens above 150 percent of the federal poverty level. OTS Exhibit No. 1, Schedule 1.
- 9) PGW only took the difference between the number of participants in the means-tested SCD and the number of participants in the grandfathered SCD and divided that by the number of years to come up with an average enrollment level per year. Tr. 617
- 10) Use of simple averaging to suggest that only 1,300 will enroll in the SCD Program on average every year belies the fact that the “baby boomers” will reach age 65 in 2011, and the number will continue to escalate to the year 2020. OTS St. No. 1 at 22.
- 11) In the City of Philadelphia the “baby boomers” generation will more than double if not triple in some cases, the number of people in the preceding age groups. The numbers associated with the baby boom generation in addition to the number of years covered by this group is simply too large to average for a determination that there will be on average an enrollment of 1,300 every year between now and the year 2020. OTS Cross-Examination Exhibit No. 1.

The above cited record evidence along with other evidence presented in OTS’s Main Brief was completely overlooked by Action Alliance in its endorsement of PGW’s case-in-chief as not being “seriously controverted by any party”.

Obviously this statement in Action Alliance's Main Brief is incorrect and thus without merit.

Another sub-topic in Action Alliance's Main Brief is its assertion that the SCD should be approved as "just and reasonable". OTS, in its Main Brief, intentionally did not discuss the legal requirements of the proposed SCD, because OTS is of the opinion that the Administrative Law Judge and the Commission need not reach that threshold due the overwhelming economic evidence that strongly suggest that the proposed SCD Program is not appropriate for PGW and its customers. In that regard, OTS would refer in part to the following statement in Action Alliance's Main Brief:

To the contrary, while rate implications of the modified SCD for other customers are not irrelevant, the test requires a qualitative assessment of the financial and social needs and social circumstances of PGW's senior citizen customer population, relative to those of other residential customers.⁴

OTS is in agreement with the above statement by Action Alliance, *except for one caveat*, and that caveat would require the consideration of the financial condition of the utility, particularly a cash flow utility. Now we are doing a "qualitative assessment of the financial and social needs and social circumstances of PGW's senior citizen customer population, relative to those of other residential customers" and *to PGW itself*. In that regard, the record evidence in this proceeding reveals the following:

⁴ Action Alliance Main Brief at 51.

- 1) PGW is in a precarious financial position. PGW St. CP-2 at 10.
- 2) PGW agrees that household and business income levels continue to drop in Philadelphia, making it increasing difficult for those customers to absorb such increases in the commodity price of natural gas. PGW St. CP-2 at 10.
- 3) PGW agrees that price levels are projected to remain at close to the current levels for the foreseeable future. PGW St. CP-2 at 10.
- 4) PGW agrees that due to persistently high prices, an increasing number of formerly good paying residential and small business customers are having difficulty paying their bills. PGW St. CP-2 at 10.⁵
- 5) PGW believes and advocates that its customers who have income at and above 150 percent of the poverty level have the ability to pay and should be required to do so, especially in light of PGW's precarious financial situation.⁶

Additionally, the Commission noted in its Opinion and Order at docket number M-00021612 entered May 18, 2004 that "in referring the proposal to the Office of Administrative Law Judge, we noted that our responsibility in these matters extends to all of PGW's customers, not just those who may benefit from the proposed discount." An objective qualitative assessment is that PGW is one billion dollars in debt with approximately half of its customers who do not have the ability to pay or who have the ability to pay but do not pay. Simply put, PGW is in a precarious financial situation as well as a significant number of its

⁵ Note that OTS Proposed Findings of Fact N. 29 on page 26 of its Main Brief should be changed to read: PGW agrees that due to these persistently high prices, an increasing number of formerly good paying residential and small business customers are having difficulty paying their bills. PGW St. No. CP-2 at 10.

⁶ PGW's Petition to Waive Certain Chapter 56 Regulations-Appendix A at 3-4.

customers, who are both senior and non-senior households. In the final analysis, PGW cannot afford a means-tested SCD out of fear that even more non-senior households close to the federal poverty level of 150 percent will face the inability to pay their gas bills, particularly with increasing gas costs. The non-senior households cannot afford to pay an additional \$60 million over the next fifteen years to fund a means-tested SCD Program.

OTS respectfully submits that there is no foundation to Action Alliance's belief that the funding is "de minimis" and the incremental cost, is only \$365,000 annually for the next fifteen years. The record evidence does not support the conclusion that the funding is "de minimis" and the cost will only be \$365,000 annually over the next fifteen years. Notably, OTS posed the following question to PGW witness Coltro:

Is the Company willing to settle for, to receive \$365,421 on an annual basis for the implementation of the senior citizen discount from this period to year 2020?⁷

The question is significant because every other party in this proceeding appear to be convinced that \$365,421 is the amount needed on an annual basis for the implementation of the means-tested SCD, OTS does not believe the amount will prove to sufficient over the next fifteen years.

With respect to Action Alliance's comment in part about OTS on page 49 of its Main Brief that "on remand, OTS.... now opines...." OTS would note for

⁷ For clarification purposes, the reference to "senior citizen discount" was referring to the implementation of the proposed means-tested senior citizen discount. Tr. 613.

the record that on page 5 of its Opinion and Order in docket number M-00021612 (entered May 18, 2004), the Commission stated the following:

Given our decision to remand this matter to the ALJ for further development of the issues described herein, the OTS should review this Opinion and Order to determine whether it wishes to renew its participation in the proceeding. If the OTS chooses, it may file the appropriate entry of appearance and fully participate in this proceeding on remand.

OTS respectfully submits that if Action Alliance disagreed with the participation of OTS in this proceeding there were two opportunities for Action Alliance to *directly* present its views. The first opportunity would have been with a “Petition for Reconsideration” of the Commission’s May 18th Opinion and Order, and the *other opportunity was when OTS filed its Notice of Appearance in the Proceeding.* Since Action Alliance failed to avail itself of the direct and proper procedures, it should not be allowed to utilize this indirect attempt in its Main Brief to question the appearance of OTS and the position we are presenting with respect to the proposed means-tested SCD Program. Interestingly, we do not witness the same comment with respect to other issues in this proceeding, particularly the *Company’s request for waiver of Chapter 56 regulations.*

Finally, upon reviewing the SCD issues in the Main Briefs of the other parties, OTS respectfully incorporate by reference the above comments in *addressing those arguments as well, except to one comment in PGW’s Main Brief.* In that instance, PGW argues that it is a “red herring and not meaningful” and that “any expense, accumulated over 16-18 years, is going to appear larger than if the

expense is considered on an annual basis.” OTS submits that PGW misses the point entirely. They cannot cry about the economic demographics of its customers and its own precarious financial situation and then argue that the cost over time does not matter. With all due respect, their argument defies logic. If the Company, and simultaneously its customers, are experiencing a precarious financial situation due to demographics, increasing gas costs and a billion dollars debt, it would seem logical that a SCD Program with a \$60 million price tag would be taken seriously; however, in its zeal to get the SCD Program approved initially, PGW is saying to the Commission, do not look at the long term cost of the SCD Program because they know that an approval means that the Program must be funded into perpetuity regardless of the cost.

OTS respectfully submits that economics dictates that the means-tested SCD Program should not be approved as presented in the Stipulation and Settlement.

E. PGW Petition For Waiver Of Certain Commission Regulations.

1. **The Company's Request For A Waiver Of Certain Commission Regulations Is Based On A Faulty Premise And Must Be Rejected.**

The Company maintains that it cannot exceed its historic levels of collections if it is forced to abide by the same set of regulations that every other public utility in the state of Pennsylvania adheres to. This proclamation is based on the undisputed fact that Philadelphia Gas Works has, by virtue of the Natural Gas Restructuring Act, only come under the full purview of the Pennsylvania Public Utility Commission since September 1, 2003. The Company has been required to be in full compliance with Commission mandates for less than one year and, despite measurable improvements in performance, has determined that it cannot survive on what it describes as the archaic standards set forth in the Regulations contained in Chapter 56.

The Company maintains that Chapter 56 is based on "1970's policy assumptions, gas prices and demographics."⁸ What the Company neglects to consider is the fact that numerous revisions have been made to these regulations since their promulgation, with the most recent changes coming in 1998. Currently there are 79 active provisions in Chapter 56. Of these 79 provisions, revisions have been made to 55 of them at least once with some provisions being amended more than once. In addition, Chapter 56 has been revised through the Formal Rulemaking Process 16 times. Chapter 56 is not a static set of guidelines as PGW would like you to believe.

⁸ PGW Main Brief, p. 5.

The Company's suggestion that the Commission cannot assess the proper balance of interests in utility matters is completely baseless and contrary to the credible evidence presented in this proceeding. The Company believes that a Senate Bill, that was not a part of the record in this proceeding, represents the proper measure for balancing the interests of the parties in Philadelphia Gas Works service territory. The Company continues this discussion throughout its Brief suggesting that its provisions be accepted as they are more reasonable than what the proposed Senate Bill would require. Albeit a public document, the provisions of this Bill are not part of the record and the adoption of this Bill cannot be considered a foregone conclusion as the Company suggests. Even if the Bill were to be considered and adopted, surely the Company is not suggesting that its measures would supercede those of the legislature. This being the case, it would appear that is not necessary to address the Company's proposed revisions as the Senate Bill would provide the necessary guidelines.

A review of the record will indicate that the Company cannot support an allegation that the parties have fully disputed the Company's claim that it needs to improve its financial situation. The Office of Trial Staff has not argued, nor does it argue in this proceeding, that PGW is not in need of some form of relief. This clarification is necessary because of the Company's bold assertion that its waiver request "comes on the heels of the parties' opposition to and the Commission's

rejection of its proposed Cash Receipts Reconciliation Clause (“CRRC”).”⁹ Evidence from the CRRC proceeding indicates that OTS is cognizant of, and sympathetic with, the financial condition of the Company. This recognition, however, does not relieve any party from abandoning provisions providing consumer protections when it has not been demonstrated by a preponderance of evidence that PGW’s solution matches the problem. In other words, don’t offer a remedy until you have appropriately determined a cause. In this proceeding, the Company position is that the system needs to be fixed despite the evidence in the records that shows it is not broken.

The Company continues to admonish the parties for not evaluating its request in its context, going as far to proclaim that the parties have refused to follow the Commission Order in this proceeding. To suggest that “the positions and testimony of these parties is of very limited use to the Commission and should be disregarded” has no basis and must be ignored. OTS has evaluated this filing in a manner consistent with Commission direction and has fashioned its recommendation accordingly. OTS acknowledges the Company’s difficulties but maintains that the suggested waiver requests are not the appropriate remedy. OTS has viewed the consolidated proceeding in total in its recommendation and cannot justify altering its position due to the rejection of its alternative as presented in the CRRC aspect of this proceeding. The Company has broken this proceeding down into individual parts and admonishes the parties for not revising its positions. To

⁹ PGW Main Brief, p. 1.

continually berate a witness for not offering an alternative to its own flawed proposal ignores the fact that the Company has, and retains, the burden of proof in this proceeding.¹⁰ Notwithstanding the Company's refusal to accept this burden, OTS will clarify its position in this particular aspect of the consolidated proceeding. The alternative to its waiver request the Company is seeking from OTS can be summarized succinctly. Utilize all provisions of the Commission's regulations as delineated in Chapter 56. Originally part of OTS's overall recommendation, nothing has changed as a result of Commission determinations in other aspects of this proceeding. The truncated, compartmentalized nature of this proceeding has necessitated the separation of the issues and altered the ability to look at proposals in their entirety. Just because the OTS recommendation for an alternate mechanism in the CRRP proceeding was not granted does not automatically make the remaining issues presented by the Company more palatable. The balance of the proceeding needs to be supported by facts and the Company has failed to provide them. There are no facts supporting the claim that Chapter 56 is a problem.

The Company steadfastly refuses to accept any responsibility for its collection performance citing numerous unsupported impediments. The Company has gone as far to state that the provisions governing winter shut-offs are too

¹⁰ PGW Main Brief, p. 8. The Company statement comes despite its recognition that it retains the burden of proof as evidenced by the transcript on page 735.

cumbersome, despite the admission that they have never even been utilized.¹¹ PGW needs the regulations on deposits to be liberalized even though it doesn't fully utilize the current provisions.¹² It wants the authority to determine who is responsible for the obligations of another instead of the current judicial system, it wants to define the circumstances affecting ability to pay citing income as the only parameter and it wants to expand reconnection times in the event of termination, even if the termination was in error. These sample provisions, as well as the balance of its request, are deemed by the Company to be the reason why it will not be successful in recovering from its financial plight. Facts to support this proclamation are lacking, but nonetheless it is important to remember that this Company has been under the provisions of the very regulations it seeks to waive for less than one year. Prior to its adherence to Commission regulations, when it controlled all aspects of its operation, its collection performance was an average of approximately 92% over the past ten years. Its proclaimed adherence to Chapter 56 regulations prior to Commission oversight did not include collection activities.¹³ One can safely conclude that PGW's collection performance when not "hindered" by regulations compared to its performance in the limited time under the guidelines shows the obvious lack of evidentiary support for its waiver request.

The Company would like you to believe that its long standing collection shortcomings can be solved by waiving Commission regulations. Remarkably, the

¹¹ Tr. 664.

¹² OTS St. No. 4, p. 8.

¹³ Tr. 662.

Company's performance prior to Commission jurisdiction yielded similar, if not poorer, results. It is *not* disputed that the Company must improve its collection performance. It *is* disputed that allowing the Company greater discretion in its collection practices will achieve this goal while still maintaining an equitable balance of the interests of all parties. While the Company should be commended for the success of its Collection Renewal Initiative, it has not demonstrated a long history of similar successes when not subject to Commission review. It is not in the public interest to abandon longstanding Commission controls and practices in the hopes that the Company can do better. The facts on record on this proceeding support the statement that they are doing better. The Company contends that its improvement still isn't enough. If this is indeed the case, then the only alternative is a base rate case accompanied by an emergency rate relief request. In fact, based on the Company's witness in the CRRC proceeding, a base rate case with an immediate rate relief component is inevitable. In the CRRC proceeding, PGW witness Bogdonavage testified that a base rate filing would likely justify \$70 to \$90 million in additional rate relief.¹⁴ Even if the company could substantiate its overstated calculations showing the benefit of waiving Commission regulations, the projected additional revenue would fall woefully short of what it has testified that it needs. The Company's projections have been generously rounded up to \$30 million¹⁵ and admittedly has not accounted for the costs of administering any of

¹⁴ PGW Main Brief, p. 16, footnote 48 citing PGW St. CRRC-1R at 5.

¹⁵ PGW Exhibit CP-1, Appendix A, pp. 4-16. Mr. Gyory's estimated values equal \$26.35 million.

these changes.¹⁶ Notwithstanding the Company's unsupported calculation, even if the \$30 million could be obtained, this represents only 33% to 43% of what the Company claims it needs. Absent CRRC approval, which has not happened, the Company cannot claim that this proposal to waive Chapter 56 regulations is the solution. The Commission has determined in the CRRC proceeding that the financial condition of the Company did not warrant the measures that had been proposed. The Commission supported the Company's CRI and obviously afforded it significant weight in its decision. This being the case, the appropriate forum to fully develop the financial condition of the Company and establish the necessary rates to enable it to provide safe and adequate service is in a base rate proceeding. An obvious alternative would be a non-litigated collaborative with all affected parties participating in order to fashion an equitable resolution to the Company's situation. Piecemeal solutions, such as the one in the present proceeding, will do little, if anything to resolve PGW's current status. That is the crux of this *consolidated* proceeding. The recommendations must be viewed in their entirety when addressing the financial situation surrounding PGW. Included in this analysis is the proposed uncollectible recovery mechanism (the CRRC), the Commission regulations waiver request, the Company's collection practices and the proposed Senior Citizen Discount. It is fundamentally inconsistent to argue that every ratepayer above 150% of the Federal Poverty level must pay for its gas consumption, no matter what, because of the Company's dire financial straits and

¹⁶ Tr. 661.

then continue a discount that currently costs between \$19 and \$20 million.¹⁷ It is well established, and admitted, that grandfathered participants in the Senior Citizen Discount are not the subject of this proceeding.¹⁸ However, this program is a fundamental part of PGW's operation and figures into its overall financial condition. Obviously City Council has mandated that it is acceptable to collect these costs from other ratepayers that the Company repeatedly characterizes as having the ability to pay. To further exacerbate this problem, the Company now proposes to expand this program to include more consumers who, by PGW's description, have the ability to pay. Again, deeming that it is acceptable to shift these costs onto its existing ratepayers. The quantification of this shift is addressed in another part of this brief but it is important to understand its role in evaluating PGW's *total financial situation and its decision making process* involved. How does the Company propose to reconcile its position that it is on the brink of financial ruin with its request to allow even more *qualified ratepayers* to receive discounted service? No party, other than OTS, has made an analysis with respect to the overall financial situation of PGW. This investigation cannot be viewed in a vacuum as the Company is suggesting.

¹⁷ PGW Exhibit SCD/CC-4, p. 20 (Gil Peach's Universal Services Evaluation: The Senior Citizen Discount Program) This is referred to as the Peach Study.

¹⁸ OTS is not using this proceeding to advocate that this program be altered or discontinued. The statement is offered in the context of understanding the total financial environment of the Company.

III. CONCLUSION

For the reasons asserted herein, as well as those presented in the OTS Main Brief, The Office of Trial Staff respectfully requests that its recommendations be adopted.

Respectfully submitted,


Johnnie E. Simms
Chief Prosecutor


Richard A. Kanaskie
Prosecutor

Office of Trial Staff
Pa. Public Utility Commission

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Dated: July 23, 2004

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. M-00021612
	:	P-00042090
Philadelphia Gas Works	:	R-00049157
	:	P-00032061

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Reply Brief** of the Office of Trial Staff, dated July 23, 2004, either personally, by first class mail, electronic mail, express mail, or by fax upon the persons listed below:

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Richard A. Kanaskie
Prosecutor
Office of Trial Staff

Dated: July 23, 2004
Docket Nos. M-00021612; P-00042090;
R-00049157 and P-00032061

COMMONWEALTH OF PENNSYLVANIA



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July 23, 2004

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Re: Investigation into Financial and Collection
Issues Regarding the Philadelphia Gas Works
Docket Nos. P-00042090, R-00049157, M-00021612, P-00032061

Dear Mr. McNulty:

Enclosed for filing are the original and nine (9) copies of the Reply Brief on behalf of the Office of Small Business Advocate in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Steven C. Gray
Assistant Small Business Advocate

Enclosures

cc: Hon. Charles E. Rainey, Jr.
Administrative Law Judge

Parties of Record

Robert D. Knecht

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BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

INVESTIGATION INTO FINANCIAL AND : DOCKET NOS. P-00042090
COLLECTION ISSUES REGARDING THE : R-00049157
PHILADELPHIA GAS WORKS : M-00021612
: P-00032061

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ON BEHALF OF THE
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DATED: JULY 23, 2004

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I. INTRODUCTION

On March 1, 2004, Philadelphia Gas Works ("PGW") submitted its annual purchased gas cost filing to the Pennsylvania Public Utility Commission ("Commission") under 66 Pa.C.S. § 1307(f). Simultaneously with the Section 1307(f) filing, PGW filed its Petition of Philadelphia Gas Works to Establish a Cash Receipts Reconciliation Clause ("CRRC Petition"). The Section 1307(f) filing and the CRRC Petition were accompanied by PGW's Motion to Consolidate ("Motion") the two filings into one proceeding.

The Office of Small Business Advocate ("OSBA") intervened in PGW's Section 1307(f) proceeding on March 11, 2004. The OSBA filed an Answer to the Motion on March 11, 2004. The OSBA also filed an Answer to the CRRC Petition on March 22, 2004.

Administrative Law Judge ("ALJ") Charles E. Rainey, Jr., presided over a prehearing conference on March 15, 2004, to establish the hearing and briefing schedule and to consider PGW's Motion to Consolidate the Section 1307(f) and CRRC cases. The ALJ granted the Motion.

The OSBA served direct testimony on April 16, 2004; rebuttal testimony on April 30, 2004; and surrebuttal testimony on May 7, 2004. The ALJ presided over an evidentiary hearing in Philadelphia on May 11, 2004.

By Secretarial Letter of May 14, 2004, the Commission gave notice that evidentiary hearings would be conducted on two limited issues that had been the subject of a Joint Application for Remand for Further Proceedings before the Commonwealth Court. Both issues were originally addressed in the October 10, 2003, Commission Order that approved a gas service tariff for PGW, docketed at M-00021612. In that proceeding, PGW had requested the approval of a ten dollar residential field visit service charge.

PGW had also requested that applicants for service with existing civil judgments against them for unpaid Company balances be required to enter into payment arrangements as a condition for service. In the October 10 Order, the Commission denied both of PGW's requests, which resulted in PGW's appealing both issues to the Commonwealth Court. In response to the Joint Application for Remand filed by PGW and the Commission, the Commonwealth Court granted the Joint Application on March 24, 2004.

On May 15, 2004, the active parties submitted a request to bifurcate the consolidated Section 1307(f) and CRRC proceeding and to extend the briefing schedule in the CRRC case so that the parties could enter into settlement discussions regarding the CRRC Petition. On May 20, 2004, the ALJ granted that request.

On May 18, 2004, the Commission entered an Order that held in abeyance a proposed settlement at Docket P-00032061 involving PGW's proposed means-tested senior citizen discount ("SCD") program. The May 18 Order required the development of a factual record on certain issues before the Commission will render a decision on the proposal.

On May 28, 2004, certain active parties submitted a settlement that resolved all issues in the Company's Section 1307(f) proceeding. The OSBA did not oppose that settlement.

On June 2, 2004, the Commission entered an Order that consolidated numerous PGW cases, including the two issues remanded from the Commonwealth Court as well as the means-tested SCD program, and established a new procedural schedule. For purposes of the CRRC Petition, the Commission dispensed with the preparation of a Recommended Decision by the ALJ and ordered that the record on the CRRC issue be,

certified to the Commission for a decision at the July 8, 2004, Public Meeting. On June 3, 2004, the ALJ issued an Order certifying the record on the CRRC to the Commission.

On June 14, 2004, the OSBA and other active parties filed main briefs regarding the CRRC. On June 22, 2004, the OSBA and other active parties filed reply briefs.

On June 16, 2004, PGW filed its Petition of Philadelphia Gas Works for Limited Waiver or Modification of PUC Chapter 56 Rules and Administrative Interpretations ("Chapter 56 Petition"). As part of the aforementioned June 2, 2004, Order, the Commission had set a deadline for PGW to file any such Chapter 56 Petition.

On June 29, 2004, the ALJ issued a Recommended Decision approving the settlement in the Company's Section 1307(f) proceeding.

By Secretarial Letter of June 28, 2004, the Commission requested answers to the Chapter 56 Petition by noon on July 2, 2004, and indicated that replies to answers would not be permitted. The OSBA filed an Answer to the Chapter 56 Petition on July 1, 2004.

On July 8, 2004, the Commission entered an Order denying PGW's CRRC Petition.

On July 16, 2004, the OSBA filed a main brief in this proceeding.

The OSBA submits this reply brief on the remaining consolidated issues set forth in the June 2, 2004, Commission Order.

II. SUMMARY OF ARGUMENT

The OSBA proposal to place a cap on the number of participants in PGW's Customer Responsibility Program ("CRP") does not violate any Commission regulation or policy.

The OSBA proposal to place a cap on the number of participants in PGW's CRP does not violate the Natural Gas Choice and Competition Act ("Gas Choice Act").

The Commission in PGW's restructuring case did not rule on whether the Company's commercial and industrial customers should pay the universal service charge. The Commission deferred the issue to PGW's next base rates case.

III. ARGUMENT

A. A Cap on the Participation in the PGW Customer Responsibility Program Does Not Violate any Commission Regulation or Policy.

The OSBA set forth two alternative proposals to mitigate the inequitable impacts of the rising costs of PGW's CRP. First, the OSBA proposed that the number of participants in the CRP be capped at 60,000. Second, in the alternative, the OSBA proposed that PGW's residential class customers pay for the incremental CRP costs for those participants in excess of the 60,000 number. See OSBA Main Brief, at 6-11.

In its argument against the OSBA proposal to limit the total number of customers in the CRP, PGW stated:

[I]n the face of a population of eligible customers estimated at 90,000, the OSBA's proposal to cap CRP participation at 60,000 is clearly inconsistent with Commission regulations and policy.

PGW Main Brief, at 69.

There is nothing "clear" about PGW's assertion. PGW provides no citation to any Commission regulation to support its claim. Furthermore, the only citation that PGW does provide is to a statement of PGW witness Cristina Coltro made during the July 6, 2004, evidentiary hearing. In that hearing, Ms. Coltro stated that "I believe waivers of Commission regulation would be required for [the OSBA] proposal." Transcript, page 605, lines 16-17. However, like PGW's main brief, Ms. Coltro provided no citation to any affected Commission regulation. See Id. In addition, Ms. Coltro is an employee of PGW, works as a Company manager (and not as an attorney), and does not have a legal background. See PGW Statement No. CP-2, at 1. Therefore, her opinion on any Commission regulation should be given no weight by the ALJ or the Commission.

Furthermore, PGW's citation-less claim of the existence of a regulation that purportedly prohibits placing a limit on the number of participants in a company's universal service program should be disregarded by the ALJ and the Commission.

PGW's other allegation, that the OSBA proposal to limit CRP participation is "inconsistent with Commission . . . policy," misses the entire point of this proceeding: to reach a balance between those who benefit from PGW's universal service programs, and those who pay for those programs.¹

Specifically, a survey of recent Commission decisions demonstrates that the Commission is fully aware of the necessity of placing a cap on the number of participants in a universal service program. For example, Columbia Gas of Pennsylvania, Inc., had its Customer Assistance Program limited to 27,100 participants. See Columbia CAP Order, Docket P-00032057 (Order Entered October 30, 2003), at 6. Equitable Gas Company Division of Equitable Resources, Inc., had its Energy Assistance Program limited to 15,000 participants. See Order on Equitable's Joint Settlement, Docket P-00032070 (Order Entered April 1, 2004), at 5.

The OSBA acknowledges that any universal service program must undergo a needs assessment, whereby the Commission determines the proper balance between the number of program participants and the amount of funding necessary to be provided from the non-participating customers. However, given the extremely high level of funding

¹ It should come as no surprise to PGW that the OSBA is particularly sensitive to any additional costs that could be charged to the Company's small commercial and industrial customers. As OSBA witness Knecht stated:

In the last cost of service study filed before the Commission, PGW's commercial customers exhibited an indexed rate of return of 268 percent, meaning that commercial customers provide PGW with a return that was 2.68 times that of the average customer.

OSBA Statement No. 1, at 2, footnote 1.

already being provided to PGW's universal service programs,² that proper balance no longer exists – to the detriment of the Company's paying customers. The Commission was justifiably concerned when it observed:

The cost of PGW's universal service programs was \$61.4 million dollars in 2003, compared to combined universal service costs of \$49 million for the seven largest investor-owned gas utilities in Pennsylvania.

PGW Investigation Order, Docket P-00042090 (Order entered June 2, 2004), at 5 (emphasis in original, footnote omitted).

Consequently, the OSBA proposal to limit the total participation in PGW's CRP does not violate any Commission policy. In fact, it is consistent with the Commission policy as recently stated in the June 2, 2004, Order:

The Commission must ensure there is some balance between the interests of the beneficiaries and contributors to these programs.

PGW Investigation Order, Docket P-00042090 (Order entered June 2, 2004), at 5-6.³

² "PGW's CRP program results in a universal service and energy conservation surcharge, now an eye-popping \$1.61 per Mcf, that exacerbates PGW's already-high gas distribution rates." See OSBA Statement No. 1, at 5.

³ In its main brief, the OTS stated that PGW's demographic conditions are not comparable to other NGDC service territories. See OTS Main Brief, at 40. From that evidence, the OTS concluded only that PGW's *low income customers need more assistance*. However, the OTS analysis suggests another conclusion entirely – that Philadelphia's demographic conditions demonstrate that PGW's paying customers are less able to afford the extremely high costs of the CRP than customers at other NGDCs. Therefore, continuing to increase these CRP costs by further "ramping up" CRP participation simply imposes additional costs on the Company's relatively less affluent base of paying customers. This is an inequitable result, and thwarts the balance that the Commission is attempting to reach in this proceeding.

B. A Cap on the Participation in the PGW Customer Responsibility Program Does Not Violate the Gas Choice Act.

In their main briefs, PGW and the OCA argued that the two alternative OSBA proposals violate the Gas Choice Act. The OSBA proposals do not violate the Gas Choice Act, and would be an interim measure to contain the spiraling costs of PGW's universal service programs acknowledged by the Commission in its June 2, 2004, Order. See PGW Investigation Order, Docket P-00042090 (Order entered June 2, 2004), at 5-6.

In its main brief, PGW argued that "the PUC has suggested that companies should ramp up program participation according to actual needs assessments." PGW Main Brief, at 68. PGW based this argument upon two sources. Id., at Footnote 241. First, PGW cited to statements made by Company witness Cristina Coltro during the July 6, 2004, evidentiary hearing. Ms. Coltro stated that "the Commission has suggested that companies should ramp up program participation"⁴ without providing any basis for her opinion. Furthermore, Ms. Coltro's citation to 52 Pa. Code § 62.4(b)(3)⁵ also provided no foundation for her claim that the Commission wants program participation to "ramp up." Section 62.4(b)(3) merely provides a laundry list of details that the Commission wants in a company's plan for a universal service and energy conservation program. See 52 Pa. Code § 62.4(b), *et seq.*

Second, PGW cited to 66 Pa. C.S. § 2203(8) to support its claim that the Commission is looking for some type of "ramp up" of universal service program participation. See PGW Main Brief, at 68. However, PGW's citation to Section 2203(8) is utterly baseless, as that section states only that universal service programs are to be

⁴ See Transcript, page 604, lines 19-20.

⁵ See Transcript, page 604, lines 21-25.

“appropriately funded and available” but does not state what level of funding is appropriate.

Consequently, any claim by PGW that the Gas Choice Act or the Commission itself has suggested that universal service programs should be “ramped up” must be disregarded by the ALJ and the Commission.

PGW also argued that the OSBA proposals would “reduce benefits available to customers at the time the Commission assumed jurisdiction.” See PGW Main Brief, at 68. This, claims PGW, would violate Section 2203(7) of 66 Pa. C.S., which requires that “[t]he commission shall . . . continue the level and nature of the consumers protections. . . that are in existence as of the effective date of this chapter.”⁶ However, PGW appears to ignore the fact that the OSBA proposal does not reduce benefits, but merely caps the benefits at the levels currently in effect, and precludes PGW from ramping up participation. The OSBA proposal does not involve eliminating benefits for customers who currently participate and remain eligible. Moreover, even if the OSBA proposal could somehow be construed as representing a reduction in benefits, the Commission has already considered and rejected this argument:

Regarding the issue before us, we agree with PGW that it is the level of quality of services and protections that must be maintained per the Act. *The Act does not require every specific pre-Act practice to remain in force*, so long as the level of quality of services and consumer protections are not reduced.

PGW Reconsideration Order, Docket M-00021612 (Order Entered June 30, 2003)

(emphasis added).

⁶ It is curious that PGW relies on Section 2203(7) while rejecting a virtually identical provision of the Gas Choice Act, namely Section 2206(a). See PGW Main Brief, at 11.

Therefore, the Commission has already ruled that Section 2203(7) does not absolutely require that PGW's CRP operate in the identical manner in which it operated prior to the enactment of the Gas Choice Act. In fact, the Commission is particularly concerned about the costs of the Company's universal service programs. That concern may grow when the Commission considers PGW's enthusiasm for "ramping up" the CRP participation levels. As the Commission stated:

[O]ne cannot lose sight of the fact that the burden of paying for each utility's programs falls on the customers of that utility. Although the goals of universal service programs are laudable, customers of PGW who pay their bills cannot be viewed as a bottomless well of funds for these programs. The Commission must ensure there is some balance between the interests of the beneficiaries and contributors to these programs.

PGW Investigation Order, Docket P-00042090 (Order entered June 2, 2004), at 5-6. In addition to not being bottomless, the well of bill-paying customers is shallower than that at other NGDC's. PGW's non-CRP customers are both proportionately fewer in number and are economically less well off than their counterparts at other NGDCs.⁷

Consequently, PGW's claim that the OSBA alternative proposals are in violation of Section 2203(7) is baseless, and should be disregarded by the ALJ and the Commission.⁸

⁷ OTS witness Hummel demonstrated that PGW's Customer Assistance Program participants as of December 31, 2003, represented 11.6 percent of residential households (56,745 ÷ 487,998) compared to 3.3 percent for other NGDCs (63,791 ÷ 1,924,946). See OTS Statement No. 3, at 11. PGW witness Peach demonstrated that real incomes have declined in Philadelphia at all income levels. See PGW Revised Statement No. CRRC-4, at 20-21. See also OSBA Statement No. 1, at 4.

⁸ This demonstrates another defect in PGW's argument that 66 Pa. C.S. § 2212(c) grants the Commission unfettered authority to waive any provision of 66 Pa. C.S. Under PGW's interpretation of Section 2212(c), PGW alone can request the waiver of 66 Pa. C.S. No other interested party, or the Commission itself, has that ability. Therefore, neither the OSBA nor the Commission could seek a waiver of Section 2203(7) in order to control universal service costs. Reading Section 2212(c) to allow PGW to remake Pennsylvania law in PGW's own image would render Section 2212(c) unconstitutional. See OSBA Main Brief, at 14-15.

In its main brief, the OCA argued that “a cap on enrollment would be inconsistent with Section 2203(6) of the Natural Gas Choice and Competition Act.” OCA Main Brief, at 49. In support of its argument, the OCA cited to Section 2203(6) itself, and to the testimony of OCA witness Roger Colton.

First, the express language of Section 2203(6) provides no support whatsoever for the OCA claim that a cap on enrollment is prohibited. Section 2203(6) instead addresses only the establishment of “an appropriate nonbypassable, competitively neutral cost-recovery mechanism” that is designed to “recover fully” the costs of a company’s universal service and energy conservation programs. See 66 Pa. C.S. § 2203(6). Section 2203(6) also requires that any such program “shall be funded and spent in each natural gas distribution company’s service territory.” Id. Therefore, Section 2203(6) provides for the recovery of whatever amount the NGDC does spend, but does not dictate what that amount should be.

Second, the OCA citation to the testimony of Mr. Colton does nothing to further substantiate the OCA claim that the two alternative OSBA proposals violate Section 2203(7). Mr. Colton’s claim that capping CRP participation would create a program that “is neither available nor adequately funded” is a gross exaggeration. The OSBA’s proposed cap would continue the CRP for **60,000** eligible residential customers of PGW, a participation level that is far from being “unavailable.” Furthermore, the Commission’s June 2, 2004, Order expressly stated that “[a]lthough the goals of universal service programs are laudable, customers of PGW who pay their bills cannot be viewed as a

bottomless well of funds for these programs.”⁹ PGW Investigation Order, Docket P-00042090 (Order entered June 2, 2004), at 5. Thus, Mr. Colton’s worry about the OSBA proposals’ causing inadequate funding of the CRP misses the point of the Commission Order entirely. The OSBA’s proposals are an interim solution to restrain the spiraling costs of the Company’s universal service programs at a time when *all* PGW’s paying customers can bear no additional rate increases, and until PGW presents its promised review of the CRP.¹⁰

In summary, the OCA argument that the two alternative OSBA proposals are in violation of Section 2203(6) contradicts Commission precedent limiting universal service program participation for other NGDCs. Consequently, any claim by the OCA that the Gas Choice Act prohibits either of the two alternative OSBA proposals should be disregarded by the ALJ and the Commission.

⁹ Mr. Colton’s failure to recognize the impact of high universal service charges for non-CRP customers is a little surprising. When considering Chapter 56 regulations, Mr. Colton expresses great concern for customers who are above 150 percent of the poverty level:

It is important not to accept the implicit assumption that merely because a household has income above BCS Level 2, that household *a priori* can be found to have an ability-to-pay its home heating bills

OCA Statement No. FCI-1, at 19. However, Mr. Colton’s concern apparently does not extend to the impact of universal service costs -- he obviously fully supports continuing to burden these customers with ever-increasing universal service charges.

¹⁰ See PGW Statement No. CP-2, at 13.

C. The Ultimate Resolution on Whether PGW's Commercial and Industrial Customers Must Pay the Universal Service Charge Awaits the Company's next Base Rates Case.

The first OSBA proposal would cap the number of CRP participants at 60,000. If the Commission decided to forego the proposed cap on participation, the second OSBA proposal would assign the incremental costs of the CRP program for participants in excess of 60,000 exclusively to the residential class.

In their main briefs, PGW and the OCA argued that this second OSBA proposal should be denied since the issue had already been fully litigated before the Commission. Unfortunately, PGW and the OCA misstated the conclusion reached by the Commission in the Company's restructuring proceeding.

Specifically, in PGW's restructuring case, the OSBA raised the issue of whether the prohibition on interclass and intraclass cost shifting in the restructuring proceeding of a natural gas distribution company, as set forth in 66 Pa. C.S. § 2211(e), applied to PGW. The Commission ruled that the prohibition did, in fact, extend to PGW's restructuring case. The Commission stated:

As we have previously concluded, interclass and intraclass cost shifting is inappropriate in the context of natural gas restructuring cases. Such issues are more appropriately resolved in a base rate case.

PGW Restructuring Order, Docket M-00021612 (Order Entered March 31, 2003), at 20.

Thus, when the OSBA raised the issue of the allocation of PGW's universal service charges, the Commission deferred the issue. The OSBA proposal would have gradually shifted the universal service costs from PGW's firm commercial and industrial customers to the residential class exclusively. The Commission, however, noting its

decision that Section 2211(e) prohibited any interclass or intraclass cost shifting in the Company's restructuring case, concluded:

This is a restructuring proceeding and not a base rate case. Therefore, the record does not contain a cost study that would support a shift in rate design.

PGW Restructuring Order, Docket M-00021612 (Order Entered March 31, 2003), at 64.

Therefore, the issue of the proper allocation of the Company's universal service costs awaits the day when PGW files its next base rates case. PGW was incorrect when it stated:

[T]he Commission has already heard and rejected the argument that commercial customers should not have to pay the universal service charge, and relitigating the issue is outside the scope of this proceeding.

PGW Main Brief, at 69. As PGW is well aware, the OSBA never had the opportunity to litigate the issue of the proper allocation of PGW's universal service costs. That issue was deferred by the Commission until the filing of the Company's next base rates case, not litigated as PGW's erroneously stated in its main brief.¹¹

Despite its prior decision to defer the universal service cost allocation issue to PGW's next base rates case, the Commission at least partially opened the door on considering the issue in this proceeding. As the Commission stated in its June 2, 2004, Order:

The Commission must ensure there is some balance between the interests of the beneficiaries and contributors to these programs.

¹¹ The OCA made a claim similar to PGW's, that the Commission in PGW's restructuring case determined that "universal service costs should be allocated to all customer classes." OCA Main Brief, at 49-50. Actually, the Commission made no such determination, and chose simply to maintain the *status quo* until the issue could be examined in the Company's next base rates case.

PGW Investigation Order, Docket P-00042090 (Order entered June 2, 2004), at 5-6. The OSBA's proposal to assign incremental costs of CRP participants in excess of 60,000 to the residential class is precisely the type of narrowly tailored, interim solution that would help the Commission restore some degree of balance in the funding of PGW's ultra-expensive universal service programs.

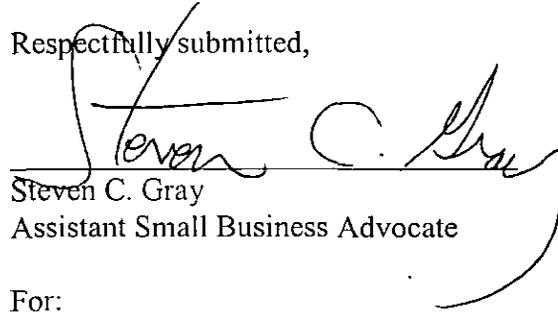
Consequently, the ALJ and the Commission should approve the OSBA's alternative proposal limiting the incremental costs for CRP participants above 60,000 to the residential class if a cap on participation in the CRP is denied.

IV. CONCLUSION

Wherefore, for the reasons set forth in this reply brief, as well as the reasons set forth in the OSBA main brief, the OSBA respectfully requests that the ALJ and the Commission:

1. Approve the January 9, 2004, means-tested SCD program settlement agreement;
2. Limit the number of participants in PGW's customer responsibility program to 60,000 participants, or in the alternative, require PGW's residential class customers to pay for the incremental CRP costs for those participants in excess of the 60,000 number;
3. Grant PGW's various requests for waivers or modifications of the Chapter 56 rules to the extent that such waivers are just, reasonable, and appropriate, and represent a reasonable balance between payment-troubled and regular paying customers; and
4. Grant PGW's various requests for waivers or modifications of the Chapter 56 rules under 52 Pa. Code §56.222.

Respectfully submitted,


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Dated: July 23, 2004

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Investigation into Financial and : Docket Nos. P-00042090
Collection Issues Regarding the : R-00049157
Philadelphia Gas Works : M-00021612
: P-00032061

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Reply Brief on behalf of the Office of Small Business Advocate by e-mail and in the manner indicated upon the persons addressed below:

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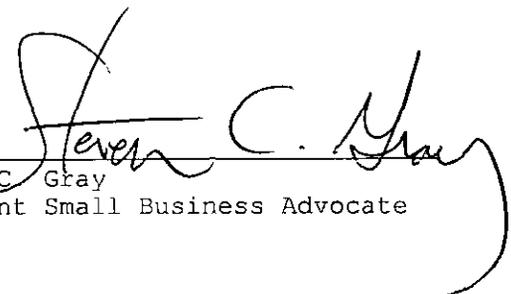
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Steven C. Gray
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July 23, 2004

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Filed by Federal Express

Re: Investigation into Financial and Collections Issues Regarding the Philadelphia
Gas Works, Docket Nos. P-00042090, R-00049157, M-00021612, P-00032061

Dear Secretary McNulty:

Community Legal Services, Inc. represents Action Alliance of Senior Citizens of Greater Philadelphia, the Association of Community Organizations for Reform Now (ACORN), and the Tenants' Action Group (TAG) (collectively "Action Alliance, et al.") in the above-captioned matter.

Enclosed please find for filing an original and nine (9) copies of Action Alliance, et al.'s Reply Brief.

As evidenced by the attached Certificate of Service, all active parties to the proceeding are being served with copies of this Answer by e-mail and/or by First Class U.S. Mail.

Very truly yours,

PHILIP A. BERTOCCI

Attorney for Action Alliance, et al.

DOCUMENT
FOLDER

cc: Certificate of Service
Administrative Law Judge Charles E. Rainey, Jr.

Enclosures

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JUL 23 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re: Investigation into Financial : Docket No. P-00042090
and Collections Issues Regarding : Docket No. R-00049157
the Philadelphia Gas Works : Docket No. M-00021612
: Docket No. P-00032061

ACTION ALLIANCE, et al. REPLY BRIEF

DOCKETED
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I. INTRODUCTION

Action Alliance of Senior Citizens of Greater Philadelphia, the Association of Community Organizations for Reform Now (ACORN) and Tenants' Action Group (TAG) (collectively "Action Alliance"), three Philadelphia consumer membership and advocacy organizations, hereby submit the following Reply Brief to the Main Briefs filed by PGW and other parties in this matter on July 16, 2004.

This Reply Brief will respond to PGW's Main Brief regarding issues concerning the Petition of Philadelphia Gas Works for Limited Waiver or Modification of PUC Chapter 56 Rules and Administrative Interpretations (hereinafter "Waiver Petition") and certain unresolved issues stemming from the October 10, 2003 Compliance Order in PGW's Restructuring Case concerning liens and judgments and the Field Charge.

This Reply Brief will next respond to the Office of Small Business Advocate (OSBA)'s Main Brief regarding PGW's universal service programs.

Finally, this Reply Brief will respond to the Office of Trial Staff (OTS)'s Main Brief concerning the Senior Citizen Discount program.

II. REPLY TO PHILADELPHIA GAS WORKS

A. Waiver Petition

1. Introduction.

PGW's Waiver Petition represents an attempt by PGW to deflect public frustration with utility underperformance caused by historical mismanagement and more recent neglect of the *collections function onto the Commission and the thousands of customers who, far from being "deadbeats," struggle on low and lower incomes to pay PGW's high rates.* The issue in this case

is not the personal responsibility of most PGW customers, but rather PGW's failure to recognize its own responsibility as a regulated public utility. As reflected in its repeated references to market practices of unregulated businesses, PGW is in denial that it is a regulated utility, publicly charged with the responsibility to provide a fundamental necessity of life to its customers within a statutorily-mandated and time-tested Chapter 56 regulatory framework designed to assure that even customers struggling to pay their bills will have a fighting chance to maintain utility service.

With regard to the Waiver Petition, PGW's Main Brief reiterates the themes of this regrettable campaign – exaggeration of the financial threat to PGW, thin or no data to support the benefits of the requested waivers, failure to acknowledge that there exist tools within Chapter 56 which may be utilized to improve its financial condition, and knowing disregard for the suffering and potential physical harm to low and lower income customers which the requested waivers are sure to cause.

2. The Bond Rating Agencies Have Not Dictated That PGW Obtain The Chapter 56 Waivers. The Commission Must Evaluate Each Individual Waiver To Determine Whether PGW Has Met Its Burden Of Showing That The Provision To Be Waived Causes Unreasonable Hardship To PGW And That The Benefits To PGW's Financial Integrity From The Waiver Outweigh The Harm To Customers.

In its Main Brief, PGW argues that the bond rating agencies require that PGW must show immediate "material" improvement above its historical 92% collections rate or suffer a downgrade to below investment grade status. PGW M.B. at 12-16. From this premise, PGW argues that given the fact that PGW is unlikely to show in the next six months that its collections rate has definitively risen above historical levels, the only way to avoid a downgrade is for the PUC to make a dramatic showing of regulatory support by granting each and every one of the

requested Chapter 56 waivers. Id.

PGW made this same argument in its CRRC Petition, although there, the measure needed to satisfy the bond rating agencies was the granting of the CRRC. In its July 8, 2004 Order denying the Petition, the Commission rejected those arguments. The Commission saw clearly that the “material” improvement that the rating agencies sought was from the low FY 2003 87% collections rate to historical levels. In the Spring of this year, when the rating agencies took their positions, it was becoming clear that the City would offer long delayed support to PGW by waiving for five years the \$18 million annual City payment, but it was still unknown whether PGW’s Collections Renewal Initiative would take hold, bring PGW back to its historical collections ratio this year, and lay the foundation for steady improvement in the years ahead.

It is now clear that PGW’s Collections Renewal Initiative is beginning to take hold, and that the collections ratio has regained historical levels, with the potential, through continued hard organizational work, to rise still higher. However, as in the case of the CRRC, PGW now seeks through this Petition to evade its responsibilities as a public utility to provide a life essential monopoly service which is accessible to all members of its customer base, not just those at the higher end of the income scale. Rather than continuing to focus all management issues on actually improving PGW’s collections processes to reasonable levels, PGW has diverted substantial managerial and legal resources to lowering customer service and customer protections standards. To accommodate this result, PGW continues to maintain that the rating agencies have “dictated” a level of “success” that can only be accomplished by immediate granting of its Waiver Petition.

The only new evidence that PGW offers in support of this position is the Standard &

Poor's July 9, 2004 Bulletin issued after the Commission's July 8, 2004 rejection of the CRRC Petition under the heading "Adverse Regulatory Decision for Philadelphia Gas Works Detracts From Credit Quality." PGW M.B. at 15. Not unexpectedly, PGW focuses on the negative – a development which S&P qualifies as "adverse" and "unfavorable." This language in itself, however, is hardly ominous, in light of the fact that from a bond rating agency perspective, no denial of a utility request for additional revenues is ever positive or favorable. What is more important in the S&P Bulletin is the S&P comment: "Still, the PUC's decision in and of itself does not have an immediate impact on the ratings on PGW." Id.

The S&P Bulletin also raises the question whether the CRRC denial means the PUC's historical "supportive" relationship with PGW is deteriorating. However, that issue is not resolved. There is no suggestion that S&P regards the current "regulatory environment" as less supportive than in the past. That is for good reason. After all, it was the Commission, not PGW, which invited PGW to identify Chapter 56 waivers that the Company believed could satisfy regulatory standards and which has committed to entertain those requests on an expedited schedule.

Finally, the Bulletin's observation that bond ratings "could" (not "would") be lowered if the "regulatory environment" affected PGW's ability to access short-term or long-term financing or gas supplies does not support PGW's claim that absent a granting of the Waiver Petition, a downgrade is imminent. In fact, neither the Bulletin nor S&P's April 9, 2004 Notice announcing a downgrade to the lowest investment grade level makes any mention of PGW efforts to secure relief from Chapter 56 consumer protection standards. In its April 9, 2004 Notice, S&P issued substantially the same warning that a downgrade could occur if PGW's access to capital or to

adequate gas supplies was impacted by its financial condition.¹ The most recent Bulletin merely represents S&P's recognition that PGW can not allow its collection rate to return to the 87% FY 2003 level, but rather must show the ability to strengthen it at least to the 92% level with potential for further improvement.

In sum, the Commission must evaluate each individual waiver to determine whether PGW has met its burden of showing that the provision to be waived causes unreasonable hardship to PGW and that the benefits to PGW's financial integrity from the waiver outweigh the harm to customers

3. Chapter 56 Represents The Collective Wisdom In This State Concerning Standards Of Reasonable Service And How Utility Financial Interests Should Be Balanced Against Customer Service and Protections. In Reviewing PGW Waiver Requests, the Commission Must Consider The Harm To Customers By Reference To Existing Chapter 56 Standards.

There is no basis for PGW's claims that Chapter 56 is no longer an appropriate guide for balancing the interests of customers and utilities and is based on outdated 1970s notions of utility billing, collection, and termination procedures.² Much of the understanding and refinement of how this interconnected structure of regulations balances utilities' and customers' interests was done in the 1990s. See OCA St. No. FCI-1 at 17 (citing 1992 BCS Final Report on Investigation of Uncollectible Balances); BCS Report of the Collections Issues Task Force, 1996; see also 28 Pa. B. 3379 (1998) (comprehensive review of Chapter 56 which was conducted in 1998). In addition, the Commission, a body much more familiar with the workings of this system than the

¹ PGW Statement No. CRRC-5, Exhibit TEK-1.

² See, e.g., PGW M.B. at 2-3, 5, 21,

Pennsylvania House of Representatives,³ recently declared in Mary Frayne v. PECO Energy Company, PUC Docket No. C-20029005 (Sept. 10, 2003), that “most energy companies have found Chapter 56 compliant programs to be effective in managing over-due accounts and payment troubled customers.” Thus, Chapter 56 as it has evolved continues to embody this state’s collective wisdom concerning how to properly balance customer protections against the financial integrity of utilities, and continues to remain the statutorily-approved minimum standard. That one house of the General Assembly has approved a bill challenging critical Chapter 56 consumer protections does not change this fact, nor change the standard that law is created only by passage of both Houses and signature of the Governor, and should not deter the Commission in giving due weight as it traditionally has done in the performance of its expert functions to the various interests which it is charged to balance under the Public Utility Code.

Action Alliance anticipates that PGW will argue that the position by the Philadelphia Public Officials concerning the Waiver Petition deserves significant weight in the Commission’s deliberations due to their status not as customers but as public officials. However, just as the Commission does not have authority in Philadelphia City Council or in the General Assembly concerning matters within the purview of those bodies, so the Philadelphia Public Officials have not been delegated with the authority to make the expert judgments required by issues raised in the Waiver Petition. The Public Officials themselves appear to recognize this limitation, as they caution that the Commission should permit implementation of PGW’s proposed waiver not in an unqualified way, but rather “in a manner that adequately balances important consumer protection

³ See PGW M. B. at 21 (discussing policy finding in Responsible Utility Consumer Protection Act that Chapter 56 regulations do not properly manage bill payment).

rights against PGW's financial interest." Philadelphia Public Officials M.B. at 10. Finally, the support of the Public Officials is further qualified by the disclosure that their brief binds no public official to any particular waiver. *Id.* at 1 n.1.

4. PGW's Quantitative Support For The Proposed Chapter 56 Waivers Is Unacceptably Thin And Not In Compliance With Express Commission Instructions.

Action Alliance maintains that PGW has failed to demonstrate the value of the requested waivers, despite having been clearly instructed by the Commission to do so.⁴ Instead, PGW reiterates that the Commission must accept PGW's financial condition as characterized by the Company as the only truly relevant consideration. While making inflated claims of the cost savings or enhanced revenues to be derived from the proposed waivers, it has steadfastly refused to provide empirical support for those claims. If the Commission grants a particular waiver, PGW does not want to be held accountable down the road for the savings/revenues that it now claims. Instead, PGW claims that, "[a]lthough the Company is not basing its waiver request on this specific calculation of benefits . . . each of the proposals clearly will provide a positive benefit to PGW's collections and cash flow or a positive reduction in costs" PGW M.B. at

⁴ In its July 8, 2004 Order in response to PGW's Motion to Certify the Waiver Petition for concurrent disposition with the CRRC Petition (hereinafter "July 8, 2004 Procedural Order"), the Commission indicated that the Waiver Petition involved "important questions of material fact" that required development on the record, including "the estimated cost savings resulting from waivers and the potential impact on customer service and consumer protections." July 8, 2004 Procedural Order at 4. In addition, in the July 8, 2004 Opinion and Order concerning the Petition of the Philadelphia Gas Works to Establish a Cash Receipts Reconciliation Clause (hereinafter "CRRC Order"), the Commission declared the need for PGW to provide a greater level of quantitative precision than mere "estimates" in support of measures involving the balancing of PGW's financial integrity against customer protections. CRRC Order at 19.

21-22.⁵

Moreover, any quantitative support that PGW provides for proposals is consistently thin. For example, PGW claims repeatedly that its payment arrangement success rate is 9%, PGW M.B. at 26, 30, 45, but it has failed to provide data which would permit the parties to verify how this figure was derived, OCA Cross Exam Exh. FCI-1. With respect to its proposal to waive 52 Pa.Code § 56.35, PGW has been forced to admit that it “does not know — and never claimed to know — how many of the accounts were reinstated after termination but under a different name at the same address and the applicant would actually qualify for having the prior arrearage assigned to him/her.” *Id.* at 39.

The OCA, which had a witness prepared to investigate the quantitative bases for PGW’s claims, has best summarized the inadequacy of that support: “PGW has failed to provide adequate support for the waiver requests in the form of empirical data to support each Chapter 56 waiver request. Instead, PGW bases the estimated cost savings and corresponding loss of protection to customers on untested assumptions, conjecture, and speculation.” OCA M.B. at 5-6.⁶ Such a wide-sweeping package of waivers that PGW itself admits constitutes “a

⁵ Even when responding to specific criticism of its value estimates, PGW is vague, such as its response to Mr. Geller’s comment that the Company can already demand significant upfront restoration payments. PGW stated merely that “[e]ven if present rules would produce one-half of the predicted benefit, the proposed change will still produce a significant incremental benefit.” PGW M.B. at 27.

⁶ One such untested assumption is reflected in PGW’s anecdotal use of one BCS decision, which is claimed to substantiate the claim that the existing BCS Income Guidelines do not permit the Company to collect reasonable upfront payments as a condition for restoration from customers terminated for non-payment. *See* PGW Cross Exam Exh. CP-3; PGW M.B. at 29. Based on the information in that complaint, the customer’s service was never terminated, so it was a completely inapposite situation in which PGW was trying to establish liability for an arrearage, not an upfront restoration payment. PGW claims incorrectly that this was an example

comprehensive modification of the rules for a utility's entire customer base," PGW M.B. at 10, should not be approved on such grounds.

5. PGW Collections Have Improved, Making Collections A Higher Priority And Establishing The Collections Renewal Initiative. The Waivers Are Unnecessary Because PGW Has Further Capacity To Improve Using As Yet Unutilized Or Underutilized Tools Provided By Chapter 56.

a. PGW's Waiver Requests Are Premature.

PGW's waiver requests are premature because PGW's Collections Renewal Initiative, launched barely six months ago in December 2003, appears to be improving collections. This Initiative includes *increasing* overtime to permit additional collections, making reminder calls to customers who fall behind when their bill is overdue less than 30 days, reporting payment status to credit bureaus, filing liens on delinquent accounts, and filing collections action against commercial customers. PGW M.B. at 19-20. This renewed collections effort has brought the collections rate back to at least the 92% historic level. *Id.* at 3. Thus, on the one hand, PGW describes all of its new initiatives, yet on the other hand, it claims it needs even more collections tools right away. PGW should have been prioritizing collections since the time collections dipped to 87%, not just since December 2003. It should not be actively seeking waivers unreasonably harming customer access to a monopoly service and a basic necessity of life before it has been seen whether such waivers will even be necessary.

b. PGW Has Further Capacity To Improve Under Chapter 56.

PGW states that Action Alliance failed to offer any alternatives to the waiver requests. PGW M.B. at 8. In its brief, PGW rejects alternatives which have been proposed because they

of BCS "frequently" reversing its restoration payment amounts on appeal, when in fact, BCS imposed the strictest Level 3 payment agreement of a budget bill plus \$100 per month.

would produce results in 4-10 months, rather than in 4-10 weeks. Instead, PGW repeatedly asserts that only the wholesale waiver of Chapter 56 deposit, credit, collection, notice, termination, payment, and winter procedures can assist it to improve collections. This is simply a continuation of PGW's self-damaging, short-sighted and short term approach to credit and collection management.

Almost a year ago, word went out from the Commission that "Chapter 56 of our Regulations sets forth many tools that, if utilized properly, can assist utilities in more effectively managing their collection activities." Mary Frayne v. PECO Energy Company, PUC Docket No. C-20029005 (Order entered Sept. 10, 2003) at 8.

During the course of this proceeding OCA, OTS, and Action Alliance have pointed out a number of these tools which, within the framework of Chapter 56, PGW could pursue to increase collections, manage debt, and establish long-term improvement of its management practices. Unfortunately, PGW, in its single minded pursuit of short term fixes, has failed to accept or carry out any of these suggestions.

Throughout this proceeding, OCA, OTS and Action Alliance have consistently asserted that the burden of establishing hardship rests on PGW and the lack of financial data provided as well as the shortness of the expedited schedule have rendered impossible any accurate assessment of PGW's actual financial needs. Nevertheless, each of these parties has identified failures in PGW's collection process and, contrary to PGW's assertions, has put forward good-faith proposals to remedy these shortcomings within the framework of Chapter 56. The record demonstrates that PGW has neither utilized nor assessed the value to it of implementing the following management tools:

- Collect security deposits from level 3 and level 4 customers who default on payments
- Utilize credit screening alternatives
- Place payment arrangement customers on the termination track after one missed payment
- Request approval of winter termination of individuals clearly able to pay
- Expand budget billing programs
- Utilize EFT for bill paying by level 4 customers

Adoption of these recommendations would, without regulatory waiver, respond to PGW's financial concerns and improve its long-term management processes.

6. PGW's Waiver Requests Unjustifiably Assume That Customers With Incomes Over 150% FPL Have By Definition The Ability To Pay Their Bill In Full And On Time. The Proposed Waivers Create An Inflexible And Uncomprehending System Which Will Cause Great Harm To Low and Lower Income Customers.

PGW claims that the opposing parties' claims concerning harm to customers to be caused by the waivers are invalid, because these parties have made no distinction between a family making \$30,000 per year and a family making \$100,000 to \$200,000 per year. PGW M.B. at 27. To the contrary, Action Alliance witness Geller specifically noted that his analysis was focused on households up to 250% of the federal poverty level (FPL) (at 250% FPL, annual income is generally over \$30,000, depending on household size), which have sufficiently low income to experience difficulty affording utility service. Action Alliance, et al. St. No. 1 at 3. In addition, the Action Alliance Main Brief discussed at length the plight of lower-income Level 3 customers, up to 250% FPL, noting the PathwaysPA self-sufficiency standard cited by OCA witness Colton as evidence that households up to 250% do not have an unquestionable ability to pay their utility bills. Action Alliance M.B. at 13 & n.24.

It is PGW, not Action Alliance or the OCA, that unjustifiably refuses to reasonably

segment PGW customers according to ability to pay.⁷ PGW should not be permitted to only view affordability through the prism of mandated customer assistance programs for customers 150% FPL and below. The BCS Income Guidelines, which recognize four levels of household income with different abilities to pay, are more in harmony with economic reality. There is no doubt that households earning \$30,000 and less per year differ from households with greater economic resources. PGW's waiver requests do not reasonably take these very real financial differences into account.

7. The Waiver Requests Are Not Limited, But Rather Dismantle A Time-Tested Structure Of Customer Protections.

a. General Comments.

PGW generally tries to minimize the impact of its waiver requests, characterizing them as limitations on customer protections rather than outright nullification of customer rights, and as narrowly drawn "to the extent necessary to achieve the desired result." PGW M.B. at 22. Of course, this is not true. As PGW ultimately admits, the waiver requests involve a "comprehensive modification of the rules for a utility's entire customer base." Id. at 10.

In its Main Brief, PGW makes a formal presentation of the testimony offered in support of each waiver as set forth primarily in Appendix A (Statement of Randall Gyory) of the Waiver Petition, supplemented with Rebuttal Testimony contained in PGW CP-1R. Id. at 21-55. PGW

⁷ The only area in which PGW distinguishes between Level 3 and Level 4 customers is its proposal restricting new payment agreements to a change in circumstances related to income level that places the customer in a lower BCS income level. See PGW M.B. at 43-44. However, even where PGW recognizes the difference in ability to pay, PGW refuses to acknowledge the lower-income Level 3 customers. For example, in describing Level 3 customers in that waiver proposal, PGW characterizes them as having "annual income levels above \$28,275." Id. at 44. No one or two-person Level 3 household from 151-200% FPL has an annual income above \$28,275.

also devotes a section of its discussion of each waiver to the opposing arguments of various parties. Most of these arguments draw on the Main Brief's various thematic distortions – the alleged financial crisis to which the waivers are the only possible response, thin assertions of huge cash savings to be expected from the waivers supported by almost no back-up data, minimization of the suffering and risk of physical harm which the waiver would cause to customers, and dismissal of the reasonable alternatives suggested by opposing parties which could be accomplished within the overall framework of Chapter 56. This Reply Brief has addressed these issues on a thematic basis, with the exception of Waiver "D," rather than following PGW's calculated repetitions.

b. Waiver "D" (Liability for Accounts In The Name Of Another Person).

In most of its requested waivers, PGW seeks alterations to Chapter 56 which are within the Commission's jurisdiction, as the Commission is charged by the General Assembly with the task of defining conditions of service which balance the interests of customers in reasonable and affordable service against the financial integrity of public utility companies.

However, PGW's Waiver "D" is not within the scope of the Commission's customary balancing. That proposed waiver requests that the Commission permit the company to condition providing service to an applicant upon payment or arrangement to pay for the outstanding balance of a co-habitant, co-tenant, or spouse at the account.

Under PGW's proposal, the inhabitant of premises where the PGW account in default is in the name of a co-tenant or spouse would not be able to apply for and obtain service prior to termination, or after termination at that address, unless he or she agreed to pay, or could arrange to pay the outstanding balance in the name of the customer or record. PGW M.B. at 37-43.

As stated in Action Alliance's Main Brief, this proposal impermissibly turns long standing hornbook contract law on its head. It is that contract law which is reflected in the Chapter 56 Section 56.35, which provides that a utility may not require as a condition of residential service that an applicant for service pay or arrange to pay "for residential service previously furnished under an account in the name of a person other than the applicant" unless a "court, a district justice or an administrative agency" has made a determination that the applicant is "legally obligated" to pay for the utility service which had been previously provided.

PGW claims that the PUC is not bound by strict contractual rules and frequently makes determinations in an attempt to balance the equities in the "public interest." PGW M.B. at 40. PGW offers not a single citation in support of this claim – which if it applies at all, does not apply to the customer/utility relationship, especially when it comes to holding an applicant responsible for an account in the name of a third party. The plain implication of existing Chapter 56.35 is that, in the definition of whether an applicant shall be held responsible for an account in the name of another person, the courts, the district justices and the state administrative agencies, the PUC included, will all be applying the same standards.

PGW attempts to buttress this waiver request with several different arguments.

The first argument is that holding co-tenants responsible for outstanding balances in the name of person residing at the account premises is standard Commission practice. It cites a single BCS decision which supposedly "demonstrat[es] that the PUC Bureau of Consumer Services reads Chapter 56.35 to permit it to assign a prior arrearage to a new applicant whenever the facts show that the new applicant benefitted from the utility service and should be responsible

for the past charges.”⁸ PGW M.B. at 38. PGW even claims that this BCS decision means that the Commission itself has “interpreted its Chapter 56 rule to permit the assignment of such arrearages to an applicant on the basis of a determination that the applicant benefitted from the service and had sufficient ties to the prior customer.” PGW M.B. at 40. However, the BCS decision does not stand for the proposition which PGW would assign to it. Even if it did, a BCS decision, not founded on Commission precedent, can not be said to represent the legal position of the Commission.

The BCS decision placed in the record did assign the arrearage to the new applicant, holding her jointly responsible for the outstanding balance with the prior customer of record. See PGW Cross Exam Exh. 3. However, nothing in the decision indicates that the basis for the decision to hold both parties responsible was that the new applicant had merely “benefitted from the utility service.”

To the contrary, the facts listed in the Informal Complaint indicate that the basis for the decision was that the express contract between PGW and the daughter, the original customer of record, had been altered to render both the new applicant, the mother, as well as the daughter, contractually liable, based on their joint participation in transferring service, negotiating a payment agreement, and their one source of shared income from which to pay the gas bills. The decision carefully documented that: (1) the daughter accompanied the mother to the customer service center to transfer service and the account balance into her mother’s name; (2) the daughter actively negotiated the payment agreement; (3) the daughter’s income was the primary

⁸ PGW M.B. at 38; the BCS determination is contained in PGW Cross Exam Exh. 3.

source of the mother's income, and (4) the daughter requested to be present and was present when the company visited the service address to confirm the account information. Thus, BCS concluded that, because the daughter had actively participated in the whole process, was the primary source of household income, and was not moving from the residence, the parties were jointly liable. See PGW Cross Exam Exh. 3.⁹

As a second argument, PGW then claims that the legal doctrine of unjust enrichment justifies PGW's refusing service in any situation where a co-habitant applies for service at an account address where there is an outstanding balance in another person's name -- unless the applicant accepts liability for the outstanding balance. However, that is not correct for several reasons. First, as even cases cited by PGW indicate, the doctrine of unjust enrichment is not applicable in situations where there is an express contract covering the same services. Mitchell v. Moore, -- Pa. Super. --, 729 A.2d 1200 (1999). In the situation at hand, where PGW seeks to hold an applicant responsible for an account in another person's name, there is always an express contract between the customer of record and PGW. Thus, the doctrine of unjust enrichment may never be used for the purposes that PGW seeks to use it.

However, even assuming that PGW can somehow get by that hurdle, the Company must also overcome the requirement that it must show that the applicant has not only received a benefit, but that it would be "inequitable" or "unconscionable" for the applicant not to be held

⁹ In addition, PGW claims that, in this case, "a mother was assigned joint responsibility for gas bills that had not been paid while both she and the previous customer, her adult daughter, lived at the residence." PGW M.B. at 40. However, the BCS decision contains no information whatsoever on how long the mother lived at the residence. Therefore, PGW's claim is unsupported.

financially responsible for the benefit received. Roman Mosaic & Tile Co., Inc. v. Vollrath, 226 Pa. Super. 215, 313 A.2d. 306, 307 (1973). To sustain its claim, it is not enough for PGW to show that the applicant received a benefit. PGW must also show that the applicant received a benefit and that he/she “did something misleading or otherwise improper in connection with the contract.” Id.

The cases cited by PGW do not support a finding of unjust enrichment where someone passively receives the benefit of another’s express contract. For example, as in Chesney, the landlord was found to have been unjustly enriched when he terminated his tenants’ lease after accepting extensive and costly improvements to the leased premises made by tenants. What made the landlord’s enrichment “unjust” was not that the landlord had passively accepted the benefits, but that he had given the tenants reason to believe that they had a commitment for a long term lease. Chesney v. Stevens, 435 Pa. Super. 71, 644 A.2d 1240, 1244 (1994). Further, in J.F. Walker, the buyer and the buyer’s surety were found to have been unjustly enriched at the expense of the seller. In that case also, the enrichment was unjust because the buyer had not merely passively accepted goods sent to him by a seller with whom he had no contract, but rather had induced the seller to provide further goods on credit by making payments on previous invoices. J.F. Walker Co., Inc. v. Excalibur Oil Group, Inc., -- Pa. Super. --, 792 A.2d 1269 (2002). None of these situations are comparable to a co-habitant of account premises who passively receives gas service which has been provided to the premises under a contract with the customer of record.

8. PGW’s Proposal For Exceptions In Extreme Circumstances Has No Content.

PGW claims that its proposals “maintain a customer’s right to appeal to the PUC when extreme hardship would result, assuring that PGW’s implementation of its modified rules will continue to be subject to independent review and revision to take account of special circumstances.” PGW M.B. at 22. However, Action Alliance maintains that “extreme hardship,” “extraordinary hardship,” *id.* at 28, or “some other tough standard,” PGW St. CP-1R at 13, are such stringent and draconian exceptions that these concessions are rendered meaningless, and do not counterbalance the harm that the waivers will cause. PGW does not offer any explanation concerning how a customer will be informed of this right. Moreover, a customer will be limited to one appeal in a lifetime on the basis of “extreme” or “extraordinary” hardship. PGW M.B. at 28, 36, 46 n.156. Since most people find themselves in extreme circumstances due to events beyond their control, pity the unfortunate PGW customer who suffers a second such circumstance.

In sum, given the Company’s hostility to providing individualized attention to its customers, the exception for extreme circumstances will not provide a meaningful reprieve for most customers suffering from the harshest effects of the waivers.

B. Compliance Order Remand --Liens and Judgments/Field Charge.

The issues concerning whether PGW may require an applicant for service to pay or arrange to pay an outstanding lien or judgment as a condition of obtaining service, and the validity of PGW’s Field Charge have been in dispute throughout PGW’s Restructuring Case.

Contrary to PGW’s contention, PGW M.B. at 76, it is not true that Tariff Section 2.4.C.6 or the Field Charge were approved in the Commission’s March 31, 2003 Restructuring Order. Both of these issues involve the Chapter 56 compliance of PGW’s Gas Service Tariff. With

regard to the issue of Chapter 56 compliance, the Commission did not rule on specific Tariff provisions, but only stated:

On the effective date of this Opinion and Order [September 1, 2003] Chapter 56 will be in effect and any PGW tariff provision that does not meet the standards of Chapter 56 is void. The compliance filing resulting from this Opinion and Order is the appropriate time for PGW to revise its tariffs to conform with Chapter 56.¹⁰

It is also surprising that PGW should suggest that no party has challenged these provisions in the Restructuring Case. PGW M.B. at 76-77. The Philadelphia low income consumer groups acting as CEPA et al. (which included Action Alliance) in the Restructuring Case opposed Section 2.4.C.6 until the Commission rejected that provision also in its October 10, 2003 Compliance Order.¹¹ Similarly, the same groups opposed the Field Charge as written in PGW's proposed Restructuring Tariff throughout that proceeding, until the Commission rejected the provision in its October 10, 2003 Compliance Order.¹²

Even assuming for the purposes of argument that either of these issues was not preserved during PGW's Restructuring Case, the Commission may still disallow this charge sua sponte pursuant to 52 Pa. Code Section 56.223 ("A tariff provision inconsistent with this chapter is

¹⁰ PGW Restructuring Case, Docket No. M-00021612 (Opinion and Order, March 31, 2003) at 38-39.

¹¹ CEPA et al.'s M.B. (December 12, 2002), PGW Restructuring Case, Docket No. M-00021612, at 17-18; CEPA et al.'s Exceptions to Philadelphia Gas Works' Compliance Tariffs (June 16, 2003), PGW Restructuring Case, Docket No. M-00021612, at 7-9. This opposition was based on the testimony of OCA witness Alexander in the Restructuring Case. OCA St. 4 at 28, 29.

¹² CEPA et al.'s M.B. (December 12, 2002), PGW Restructuring Case, Docket No. M-00021612 at 48; CEPA et al.'s Exceptions to Philadelphia Gas Works' Compliance Tariffs (June 16, 2003), PGW Restructuring Case, Docket No. M-00021612 at 2-3. This opposition was based on the testimony of OCA witness Alexander in the Restructuring Case. OCA St. 4 at 27.

deemed nonoperative and superseded by this chapter.”).

With regard to liens and judgments, PGW continues to maintain that it would not require an applicant to pay or arrange to pay charges contained in liens and judgments which were incurred more than four years before the date of application. However, PGW steadfastly refuses to amend Tariff Section 2.4.C.6 to reflect accurately the limits of its legal right to require applicants to pay or arrange to pay outstanding liens and judgments as a condition of service. Without this amendment, Action Alliance continues to oppose Section 2.4.C.6.

Action Alliance supports the Commission’s position that the Field Charge is not consistent with Chapter 56. Moreover, PGW is not seeking merely to continue an historical charge which existed under its pre-restructuring Tariff. Rather, as Action Alliance demonstrated in its Main Brief, the Field Charge which PGW proposes now is much broader in scope than the Field Charge as it existed in PGW’s pre-restructuring Tariff. The historical Field Charge was not applicable each time a PGW employee visited the account premises in connection with a termination, but only when there had been an actual prior contact either by telephone or at the account premises. Action Alliance M.B. at 46.

The Commission should reject PGW’s argument that its base rates would be effectively diminished if the Field Charge is disallowed. PGW M.B. at 78. In the Restructuring Tariff, PGW raised its reconnection charge from the pre-restructuring Tariff’s \$45 to \$123.23,¹³ without any concomitant reduction in base rates. It has not, so far, offered to reduce its base rates to reflect an increase in a charge levied on particular customers.

¹³ CEPA et al.’s M.B. (December 12, 2002), PGW Restructuring Case, Docket No. M-00021612, at 49-50; PGW Gas Tariff - Pa. P.U.C., No. 2, Original Pg. Nos. 36 and 57.

III. REPLY TO THE OFFICE OF SMALL BUSINESS ADVOCATE (OSBA) - CRP

Action Alliance supports and affirms the responses of PGW and the OCA in opposition to OSBA's proposals regarding CRP. See OSBA M.B. at 9-10; PGW M.B. at 68; OCA M.B. at 48-50. Specifically, PGW correctly notes that OSBA's suggestion that PGW cap CRP enrollment at its current level of approximately 60,000 customers is inappropriate because the need for CRP is very significant in Philadelphia, and encouraging enrollment of eligible, low-income customers who would benefit from the program is consistent with Commission policy. PGW M.B. at 68. In addition, the Commission has already rejected the argument that commercial customers should not have to pay the universal service charge, and it should not be relitigated in this proceeding, which is focused on PGW's collections, not commercial customers' bills. Id. at 69.

IV. REPLY TO OFFICE OF TRIAL STAFF (OTS) – Senior Citizen Discount

In its Main Brief, the Office of Trial Staff (OTS) summarized the reasons, as set forth in its pre-filed Testimony why it opposes not only the Means Tested Senior Citizen Discount, but any Senior Citizen Discount. OTS M.B. at 4-11. In short, for the most part, they boil down to the position that prior to the Gas Choice Act, the Public Utility Code did not authorize a public utility regulated by the Commission to maintain a Senior Citizen Discount. For that reason, OTS finds any Senior Citizen Discount per se unreasonably discriminatory, in violation of Public Utility Code Section 1304. In OTS's view, the Gas Choice Act did not change applicable Pennsylvania law concerning senior citizen discounts offered by public utilities.

However, as both PGW and Action Alliance have stressed in their Main Briefs, the Gas Choice Act did change the Public Utility Code. Action Alliance M.B. at 49-53; PGW M.B. at 59-

60. The Act not only specifically authorized a non-means tested Senior Citizen Discount to continue to exist, but it also made clear that it was not within the power of the Commission acting alone to alter the grandfathered Senior Citizen Discount. Moreover, the Gas Choice Act also provided that the Governing Body of the City could by ordinance develop a modified Senior Citizen Discount for non-grandfathered senior citizen PGW customers. This modified Senior Citizen Discount could become effective upon review and approval by the Commission under the “just and reasonable” standard. 66Pa.C.S. § 2212(r).

In its opposition to the modified Senior Citizen Discount, OTS expresses concern that other utilities may desire to establish senior citizen discounts. However, such a fear is exaggerated. In enacting Gas Choice Act Section 2212(r), the General Assembly was not authorizing Senior Citizen Discounts for investor-owned gas utilities, or investor-owned utilities of any nature in this state. Rather, in a section of the Gas Choice Act which exclusively addresses the transfer of jurisdiction over the municipally owned PGW to the PUC, it provided some narrow recognition of PGW’s uniqueness among Pennsylvania utilities. In so doing, the General Assembly recognized that one municipality may legitimately wish to provide additional protection for the senior customers of its gas utility, and within the limits of the “just and reasonable” standard, should be permitted to do so.

V. CONCLUSION

For all the foregoing reasons, Action Alliance respectfully requests that the Commission:

- (a) deny PGW’s Chapter 56 Waiver Petition;
- (b) allow PGW to condition granting an application for service upon payment or arrangement to pay an outstanding lien or judgment, subject to the condition that Section 2.4.C.6 of its Tariff be

amended to specify that PGW may require only payment or arrangement to pay that portion of the sum subject to a lien or judgment which arises from service provided within the four years prior to the application date;

(c) reaffirm its disallowance of the Field Charge;

(d) find that PGW's CRP program is in compliance with Commission regulations and policies and should not be capped at 60,000 participants;

(e) approve the modified Senior Citizen Discount as "just and reasonable" and grant the discount to senior citizen customers who have applied for service since September 1, 2003; and

(f) grant such other relief as is just and proper.

Respectfully submitted,



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July 23, 2004

Attorneys for Action Alliance of Senior
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Tenants' Action Group

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document upon the following parties at the addresses and in the manner described below:

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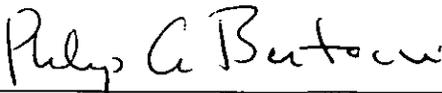
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RE: Investigation into Financial and
Collections Issues Regarding the
Philadelphia Gas Works
Docket Nos. P-00042090; R-00049157
M-00021612; P-00032061

Dear Secretary McNulty:

Enclosed for filing please find an original and nine (9) copies of the Office of Consumer Advocate's Reply Brief, in the above-referenced proceeding.

Copies have been served upon all parties of record as shown on the enclosed Certificate of Service.

Sincerely,

Stephen J. Keene
Senior Assistant Consumer Advocate

Enclosures

cc: All Parties of Record
Honorable Charles E. Rainey, Jr. (Hand Delivery)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

INVESTIGATION INTO FINANCIAL AND
COLLECTIONS ISSUES REGARDING THE
PHILADELPHIA GAS WORK

:
: Docket Nos. P-00042090
: R-00049157
: M-00021612
: P-00032061

ORIGINAL

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I. INTRODUCTION

On June 16, 2004, the parties filed their Main Briefs in this proceeding setting forth their positions regarding the issues that have been set for investigation by the Commission in this Investigation Proceeding. Main Briefs were filed by the Office of Consumer Advocate ("OCA"), Philadelphia Gas Works ("PGW"), the Office of Trial Staff ("OTS"), the Office of Small Business Advocate ("OSBA"), Philadelphia Industrial and Commercial Gas Users Group ("PICGUG"), Action Alliance, *et.al.* ("Action Alliance") and Senator Vincent J. Fumo, *et.al.* ("Philadelphia Public Officials"). The OCA's Main Brief set forth its position with respect to PGW's proposed Chapter 56 waivers, collections issues, universal service issues, compliance tariff issues and the proposed Senior Citizen Discount. It is not necessary for the OCA to repeat those arguments here. The OCA's focus in this Reply Brief will be to address arguments of the other parties in a manner that will assist the Commission in making a determination in this proceeding.

II. REPLY ARGUMENT

A. Introduction.

As explained in detail in the OCA's Main Brief, PGW has failed to demonstrate that several of the waivers of Chapter 56 that it seeks are supported by sufficient evidence to carry the burden of proof that the Commission established in its June 2 Order. The Commission's June 2 Order specifically placed the burden on PGW to balance consumer protection rights with the financial integrity of PGW. In support of many of its Chapter 56 waivers, PGW only offers estimated values based upon untested assumptions, conjecture and speculation. Instead of offering concrete empirical evidence to support its requested waivers, PGW cites to extra-record evidence and legislation that remains unpassed in the General Assembly. The OCA submits that the issues at stake in this proceeding are far too important to be decided by evidence that has not been examined on the record.

The sweeping waiver requests that PGW proposes would strip consumers of many important safeguards that are designed to protect the public health and safety. Moreover, by piling one waiver request upon another, PGW's proposal has a compounding effect that would leave many lower income consumers extremely vulnerable.

The modifications and waivers of Chapter 56 proposed by PGW, particularly those pertaining to termination of service, could leave consumers without heat during the winter and have life-threatening ramifications. Last year, PGW entered the winter heating season with 4567 households in its service territory without heat and another 918 households using potentially unsafe alternative sources of heat. Tr. 684-685; OCA Cross-Exh. FCI-2. The OCA submits that if PGW is granted all of the Chapter 56 waivers that it seeks, these numbers will grow considerably. Large numbers of households left without heat in the winter will lead people to abandon residences, resulting in increased homelessness and degradation of neighborhoods. The threat of fires will increase due to the increase in the number of households using unsafe heating sources.

The OCA submits that these dangers are very real and that every reasonable effort should be made to avoid such an outcome. That is why OCA witness Colton has proposed some common-sense alternatives to sweeping Chapter 56 waivers that would lead to improvement of PGW's collections while at the same time maintaining important consumer protections that protect the public health and safety of the community. The OCA's recommended alternatives, along with some narrowly-tailored waivers of Chapter 56 and the continuation of PGW's successful Collections Initiative, will provide the Company with the tools it needs to continue to improve its collections and improve its financial condition. The OCA's alternative proposals – targeted at those that have the ability to pay, but do not – still provide enough flexibility so that customers who suffer a temporary financial hardship are not necessarily exposed to loss of service. The OCA submits that the alternatives proposed by OCA witness Colton strike the proper balance between working to improve PGW's collections and financial health, while maintaining many of the important consumer safeguards contained in Chapter 56.

PGW continues to support its request for Chapter 56 waivers by arguing that it must have these waivers or else the rating agencies will downgrade the Company. The Company has repeatedly made this argument in various proceedings before the Commission over the past several years in order to obtain rate relief from the Commission. The OCA submits that such statements become a self-fulfilling prophecy if repeated often enough by a utility. Indeed, in spite of increases in annual base rates of \$69.5 million in less than a three-year period,¹ and a projected FY2004 year-end cash position better than any of the past four years, PGW still raises the specter of being downgraded in order to obtain relief in both the CRRC proceeding and to support its request for waivers of Chapter 56. The OCA submits that for the reasons set forth in its Main Brief, PGW's financial condition is not as precarious as it claims. OCA M.B. at 15-16.

The Commission came to the same conclusion recently, when it rejected PGW's proposed CRRC:

Generally, we are of the opinion that PGW's presentation of its financial situation is internally inconsistent. PGW, while warning of a poor financial picture, also cites a commitment from the City to assist PGW to improve its financial condition. Thus, PGW's financial outlook is not as desperate as it seemed at the time the Petition was filed. We commend PGW for taking appropriate steps to improve its cash flow for this fiscal year and look forward to further improvement. Nevertheless, we find that PGW has not carried its burden of proof and has not shown that its current financial condition warrants actions that would depart from adherence to Pennsylvania ratemaking law and principles.

CRRC Order at 11. The OCA agrees with the Commission that PGW's collections have shown marked improvement and therefore, its cash position is not as dire as the Company claims.

In spite of the Commission's findings in the CRRC proceeding, PGW continues to raise the potential of a ratings downgrade as a justification for its proposed Chapter 56 waivers. To further this argument, PGW has attached to its Main Brief yet another extra-record

¹ See *Pa.P.U.C. v. Philadelphia Gas Works*, Docket No. R-0006042 (Order entered October 12, 2001)(granting a \$33.5 million annual increase in base rates) and *Pa.P.U.C. v. Philadelphia Gas Works*, Docket No. R-00017034 (August 8, 2002)(making permanent an extraordinary rate relief increase in annual base rates of \$36 million along with a weather normalization clause).

report from Standard & Poor's ("S&P") entitled "Bulletin: Adverse Regulatory Decision for Philadelphia Gas Works Detracts from Credit Quality," dated July 9, 2004 (hereinafter July 9 S&P Report"). PGW M.B., App. A. PGW claims that this is evidence that S&P will downgrade PGW if it does not receive the Chapter 56 waivers. PGW M.B. at 4, 15. The OCA submits PGW's interpretation of this report is misplaced and that the July 9, 2004 S&P Report speaks for itself. The July 9 Report does not stand for the proposition that PGW will be downgraded if the proposed Chapter 56 waivers are not granted. As the OCA noted above, there are alternative measures that can be turned to other than PGW's Chapter 56 waivers.

In fact, the July 9 S&P report does not even mention the Company's Chapter 56 Waiver Petition or the Commission's Investigation into PGW's Financial and Collection Issues. More importantly, the Commission should look at such evidence skeptically. The July 9 S&P Report is not evidence of record in this proceeding. *The first time this evidence was presented in this case was as an Appendix to PGW's Main Brief filed on July 16.* It was not presented as evidence at the evidentiary hearings, nor has PGW moved to have it admitted into the record as a late-filed exhibit. PGW has not offered up a witness to sponsor this exhibit nor have the parties had any opportunity to do discovery regarding this exhibit. PGW simply attached the July 9 S&P Report to its Main Brief and commenced to quote freely from it. The OCA submits that such evidence should not be relied upon in making a decision on important issues that impact the public health and safety of the citizens of Philadelphia.

Moreover, it is not known whether the rating agencies would look favorably upon the OCA's alternative proposals. The OCA has provided substantial evidence that these alternatives would give PGW additional tools that would improve its collections rate. None of the rating agencies have stated explicitly or implicitly that Chapter 56 waivers are the only acceptable solution for PGW. A fair reading of all of the recent reports from the rating agencies indicates that rating agencies are only interested in seeing improved collections and liquidity from PGW. None of the rating agency reports have dictated how that is to be achieved.

The OCA would also note that no one from S&P has ever testified before the Commission in any of PGW's proceedings, despite the fact that PGW has continuously tried to utilize such reports from the rating agencies to extract relief from the Commission. If such evidence can be used to dictate the relief that this Commission grants in regulatory proceedings such as this, then the Commission is being asked to effectively cede its oversight of this Company to an S&P analyst in New York. None of the rating agencies are tasked with the duty to ensure that PGW is providing safe, adequate and reliable service. Under the Public Utility Code, that responsibility rests solely with the Commission. 66 Pa.C.S. § 1501.

Finally, the Company tries to bolster its case by citing legislation that is pending before the General Assembly, as evidence of the General Assembly's intent that Chapter 56 regulations are impeding the ability of utilities to collect billed revenues. The OCA submits that this argument should be given no weight. The legislation cited by PGW, Senate Bill 689, was passed by the House of Representatives but apparently failed to gain enough support in the Senate to be brought up for a vote in that chamber of the General Assembly during the last-minute flurry of activity at the end of the most recent legislative session. Courts have long held that legislation passed by only one chamber of the legislature does not reflect the intent of the entire legislature. *See, e.g., DKT Memorial Fund, Ltd. v. Agency for Int'l Dev.*, 691 F.Supp.394, 402 (D.D.C. 1988); *James v. Young*, 43 NW.2d. 692, 698 (N.D. 1950); *Read v. Shuston*, 132 Pac. 109, 111 (Idaho 1913) (a public policy is declared by the action of the legislature not by its failure to act.). During the evidentiary hearings in this proceeding, the Company tried to make reference to SB 689 during cross-examination of witnesses. This was met with an objection that was sustained by the Presiding Officer. Tr. 827-829. The OCA submits that PGW's attempt to rely upon references to unpassed legislation pending before the General Assembly should likewise be afforded no weight.

B. Specific Chapter 56 Waiver Requests.

1. 52 Pa.Code § 56.191 – Require Full Payment Of Outstanding Balance Before Restoration Of Service.

The first waiver that PGW seeks would result in PGW being allowed to require that BCS Level 3 and 4 customers, who have been terminated for non-payment, must make full payment of all outstanding balances before they can have service restored. PGW M.B. at 25-29. Under current Chapter 56 regulations, customers can have service restored upon entering into a payment arrangement of reasonable length. 52 Pa.Code §52.191. The OCA opposes this waiver request for the reasons set forth in its Main Brief. OCA M.B. at 21-25. The OCA submits that PGW’s proposal to waive this Chapter 56 requirement does not adequately weigh the impact on consumers, particularly the working poor who constitute many of the Level 3 customers.

The Company claims that this waiver is justified due to the “lack of success” that PGW has had historically in maintaining payment arrangements. PGW M.B. at 25-26. PGW’s historic payment arrangement success rate is only 8-9%. *Id.* at 26. However, the OCA would note that this is a historic rate for payment arrangement success prior to implementation of the Collections Initiative. The OCA submits that this rate should improve appreciably as the Collections Initiative, along with the further innovations in collections recommended by OCA witness Colton such as EFT payments and budget billing, take effect.

The Company does not address the OCA’s contention that this waiver will impact the working poor the hardest. The only recognition of this is PGW’s offer to modify its proposal to allow a customer to file an informal appeal with BCS if the customer could show “extraordinary hardship.” PGW M.B. at 28. The OCA submits that this unfairly shifts the burden from the Company to the most vulnerable type of customer – one who has been terminated and cannot pay the outstanding balance to be restored and also is not eligible for energy assistance. Many of these customers would not even know of their rights to file an “informal appeal with BCS” and would simply do without heat. The current Chapter 56

regulations are designed to prevent just such an occurrence. If PGW is concerned that customers are using this regulation to avoid paying delinquent balances when they have the means to do so, the Company can just as easily seek individual waivers of this regulation instead of inflicting hardship upon some of the most vulnerable of its customers.²

2. 52 Pa.Code § 56.100 – Winter Termination Rules.

Through this request, PGW is seeking to waive the Commission’s winter termination rules for Level 3 and 4 customers. PGW M.B. at 29-33. Current Chapter 56 regulations generally prohibit termination of heat-related services from December 1 through March 31. 52 Pa.Code §56.100. The OCA opposes this waiver request for the reasons set forth in its Main Brief. OCA M.B. at 25-29. The OCA submits that PGW’s proposal to waive Section 56.100 also fails to adequately weigh the impact on the working poor and could lead to tragic results and have serious ramifications for the City of Philadelphia.

PGW’s proposal inaccurately assumes that customers in Level 3 are able to pay their natural gas bills but are using the winter shutoff rules “as a shield to avoid paying bills.” Chapter 56 Waiver Petition at 20. In spite of having the burden of proof on such a draconian waiver request, PGW did not come forward with evidence of one instance where this occurred. To the contrary, OCA witness Colton provided extensive testimony that many Level 3 customers do not have incomes that are sufficiently stable to allow them to meet their living expenses without occasional disruption. OCA St. FCI-1 at 24-25; App. D. Because these customers are above 150% of the federal poverty level, they are not eligible for most energy assistance

² PGW also claims that current Commission rules that allow the Company to require a payment of 50-75% of the outstanding balance upfront before being restored is often overturned by BCS upon appeal. PGW M.B. at 29. In support of this, PGW cites *one* informal decision by BCS that established a payment of \$100 per month toward an arrearage of \$7,000 in order to receive service. PGW Cross-Exh. CP-3. The OCA submits that this case is not even applicable to the instant waiver request since it arose in a different context. Furthermore, the remedy in such a situation is not to scrap Chapter 56 protections for all PGW customers. Instead, the Company should appeal this determination to the Commission if the Company does not feel the result is reasonable – an action that it has already taken.

programs. Sadly, PGW's waiver request would result in a loss of heating service during the winter for such customers.

The OCA submits that loss of heat during the winter could result in significant threat to the public health and safety in Philadelphia. The National Energy Assistance Directors' Association Report ("NEADA Report"), attached to OCA witness Colton's testimony as Appendix F, described some of the difficult choices it presents and the results of those choices:

The Iowa survey found that nearly 30 percent of respondents skipped a payment on other bills to meet their total residential energy expenses. Over 12 percent of Iowa LIHEAP recipients went without food to pay their home heating bill. More than 20 percent went without needed or prescribed medical care. The notion of having to choose to heat or to eat is indeed a tough choice. Having to choose immediate health (*i.e.*, staying warm) over general long-term health (*i.e.*, receiving appropriate medical care) is another untenable situation.

* * * * *

Unhealthy environments such as severe indoor temperatures produce another set of tough choices. For example, if a low-income senior can't afford her home heating bills, does she choose to turn off the heat and risk death or does she partake in an alternative practice to stay warm? Sadly, the risks involved for alternative home heating methods can lead to just as dire results.

* * * * *

Low-income household members are more likely to miss school and work due to illnesses caused by unhealthy environments and severe indoor temperatures. Low-income households are more often forced to make difficult health-related choices to meet their energy needs, such as whether to heat or to eat. As this section has shown in so many ways, low-income households regularly struggle due to high energy bills.

OCA St. FCI-1; App. D at 8, 9, 11 [footnotes omitted]. Indeed, as evidenced by some of the testimony at the Public Input Hearings, some of these very choices are being made every day by a certain segment of PGW's customers. Tr. 205, 530, 538, 541, 548-551, 554-557.

The NEADA report also set forth some chilling examples of the dangers caused by a loss of heating service during the winter:

Low-income families will also compensate for a loss of home heating service or unaffordable bills by using space heaters or ovens. The inability to afford or maintain working smoke detectors in combination with misused or poorly maintained alternative heating can be deadly.

In Maine, a single mother was using the kitchen oven and a kerosene space heater to keep her family warm. When the kerosene space heater ran out of fuel oil, it sparked a fire that killed a baby girl and injured four other people. In December 2003, a Florida grandmother attempting to use the oven to heat her home accidentally turned on the stove. A decorative burner caught fire and brought down the 30-year-old home she shared with her daughter and grandson. When temperatures fell below 20 degrees, a Louisiana man turned on his electric oven for heat and went to work. When he returned from work, his home had burned to the ground. An autistic eight-year old boy was standing too close to a stove being used for home heating. The boy was holding a piece of paper, which was ignited by the stove, causing a fire that took his life. In February 2003, an eighty-three-year-old man died from either hypothermia or carbon monoxide poisoning while sitting in his parked car for warmth because his home heating system wasn't working.

The extent to which low-income families will go to stay warm in the winter can be extreme. An Indiana family whose gas service had been discontinued removed a burner from the stovetop and plugged it into an extension cord to heat a downstairs bedroom. Fire officials found no smoke detectors in the remains after fire tore through the house, killing a sixty-five-year old man and six children all under the age of nine. These tragedies demonstrate that alternative efforts to simply stay warm can lead to grave results for children, the elderly, and people with income below the poverty line.

OCA St. FCI-1, App. F at 9-10 [footnotes omitted].

Action Alliance witness Geller testified that this waiver request will lead to damage to housing stock and plumbing. AA St. 1 at 25. The OCA submits that the foregoing demonstrates that PGW's proposal to eliminate the Chapter 56 winter termination procedures will place lives at risk, force people to abandon their homes and increase homelessness. This will place a tremendous burden upon the City of Philadelphia, and local service agencies and will

result in the degradation of neighborhoods. The Director of the Mayor's Office of Consumer Affairs, Lance Haver, testified about the burden that will be placed on the City of Philadelphia if large numbers of customers are terminated in the winter:

The Commission must give PGW the tools it needs to go after those who can pay and don't, while protecting consumers who are simply too poor to keep up. In doing so, the Commission must leave the winter moratorium in place. Not just because it's the moral thing to do, but also because shutting people off in the winter will actually cost the City more than allowing people to pay what they can. Winter shutoffs mean water pipes will break, homes will become abandoned, real estate taxes will not be paid, the number of people using the shelter system will increase, and eventually the City will have to pay to either board up the home or knock it down or both. Winter shutoffs only shift costs, it doesn't eliminate them.

T. 132.

Therefore, the OCA submits that before PGW is granted this waiver, better evidence must be adduced to support PGW's requested waiver and a more thorough examination *of the potential impact of this action be made.*

3. **52 Pa.Code § 56.32 – Mandatory Deposits For New Customers.**

PGW requests that it be permitted to require a flat turn-on deposit for all new or restored customers regardless of credit risk. The entire deposit must be paid in full before PGW will provide service. PGW M.B. at 33-37. Currently, Chapter 56 allows an applicant to avoid paying a security deposit by (1) showing a prior credit history of satisfactory utility payments; (2) owning property or lease property for at least a one-year term; or (3) otherwise demonstrating good credit, 52 Pa.Code §56.32. Chapter 56 also allows an applicant who is assessed a security deposit to pay that amount over a three-month period. 52 Pa.Code. § 56.37. The OCA opposes this request as an unnecessary barrier to public utility service. See OCA M.B. at 29-34.

OCA witness Colton testified that requiring applicants with good credit to pay a security deposit is meaningless, since the only purpose in requiring a security deposit at all is to guard against the risk of non-payment, and customers with good credit will pay their bills. OCA

St. FCI-1 at 31. In response, the Company provides the real motivation behind this request – to come up with additional cash working capital. PGW M.B. at 36. The OCA submits that this is unreasonable. As Action Alliance witness Geller testified, this is nothing more than a forced loan by customers to PGW. AA St. 1 at 15. The OCA submits that such a condition should not be placed on a public utility service.

Instead, the OCA submits that the Company should pursue implementing a credit scoring program similar to what other Pennsylvania utilities have done. In response to this proposal, the Company claims that its systems and procedures would not permit a credit scoring program to go into effect until the third quarter in 2005. PGW M.B. at 36. The OCA submits that this claim is simply not credible. PGW claims that it can apply the requisite software to establish through corroborated documentation the identification and previous address of new applicants so that it can put a stop to the “name game,” yet it cannot adapt its systems to undertake a simple procedure such as credit scoring. Chapter 56 Waiver Petition, App. A. At least four other Pennsylvania utilities have had little difficulty in implementing credit scoring.³ If PGW’s claim that it cannot do credit scoring until late next year at the earliest is true, then this is another example of PGW’s inability to maintain standards comparable to the rest of the industry. The OCA submits that PGW should be required to direct its resources to credit scoring in the same manner that a host of other utilities have done.

³ See, e.g., *Petition of Columbia Gas of Pa., Inc. and PPL Electric Utilities Corp for Limited Waiver of 52 Pa.Code §56.32(2)*, Docket Nos. P-00001807 and P-00001808 (Orders entered February 8, 2001 and March 8, 2001); *Petition of The Peoples Natural Gas Co. d/b/a Dominion Peoples for Limited Waiver of Regulations at 52 Pa.Code §56.32(2)*, Docket No. P-00021972 (Order entered September 13, 2002); *Joint Petition of Equitable Gas Co. and the Office of Consumer Advocate for Limited Waiver of Regulations at 52 Pa.Code §56.32(2) to Permit an Experimental Program to Determine Residential Customer Security Deposits Based Upon Credit Scoring*, Docket No. P-00011915 (Order entered November 15, 2001).

4. **52 Pa.Code § 56.35 – Requiring An Applicant To Pay For Service Rendered Under The Name Of Another.**

PGW is requesting a waiver of that section of Chapter 56 that prohibits a utility from requiring an applicant to pay for residential service previously furnished to a person of another name, unless the applicant is legally responsible for that person. PGW M.B. at 37-43; 52 Pa.Code §56.35. PGW's request is premised upon the unfounded assumption that all customers requesting the furnishing of service are gaming the system. However, PGW has provided no evidence that the "name game" is occurring in a substantial number of cases.

The OCA submits that this waiver should be rejected. As the OCA noted in its Main Brief, utility service is contractual in nature, and a utility may not hold an applicant liable for an unrelated third-party's debt when the applicant was neither a party to the third-party's contract with the utility nor a party that contracted with the utility to be liable for the third-party's debt. OCA M.B. at 34-35. The Company argues that the Commission has already determined that it can assign joint responsibility for a utility bill and cites an informal decision of BCS that was introduced as PGW Cross-Exh. CP-3. However, the facts of that particular case are very different than the sweeping application of the waiver that PGW seeks. In that case, a mother and daughter went to a PGW customer service center together to transfer service and an account balance from the daughter's name to the mother's name. Both persons actively participated in negotiating a payment arrangement. The daughter was listed as the primary source of income for the mother. With each communication between PGW and the customer, the daughter requested that she be present. Under these limited circumstances, BCS determined that there was joint liability for the outstanding balance. PGW Cross-Exh. CP-3.

The OCA submits that, under those circumstances, it may be reasonable for the Commission to assign joint liability for the account balance. In fact, this case demonstrates how unnecessary PGW's proposed waiver is. The Commission is perfectly able to decide these matters on a case-by-case basis. There is no need to impose a blanket requirement upon new applicants that they must be responsible for the service of a prior customer.

5. **52 Pa.Code § 56.97 – Limitation Of One Payment Arrangement.**

PGW is also proposing to limit customers to only one payment arrangement and to impose strict guidelines on the duration and amount of those payments depending upon income levels. PGW M.B. at 43-45. For the reasons set forth in its Main Brief, the OCA submits that this sort of “one-strike and you’re out” approach is inconsistent with the goals of Chapter 56 and should be rejected. OCA M.B. at 36-40.

The Commission has already adopted a policy limiting a person to one payment arrangement unless there is a change of circumstances that would justify modification to that payment arrangement. *Frayne v. PECO Energy Co.*, Docket No. C-20029005 (Opinion and Order entered December 23, 2003). PGW’s waiver request would severely limit what constitutes a “change in circumstances” to only those situations where a person’s income level changes so as to place them in a different BCS income level. The OCA submits that such a bright-line rule that considers only one element of affordability, a household’s income, does not adequately consider whether a household has experienced a change in circumstances that would make a payment arrangement no longer affordable. For instance, an unexpected illness, a sudden increase in natural gas rates, an unusually cold winter, the breakdown of an automobile, a repair to a roof or replacement of an aging major appliance could all impose a significant unexpected expense upon a household and constitute a change in circumstance that would render a payment arrangement unaffordable. AA St. 1 at 23. The OCA submits that PGW’s limitation of “change in circumstances” to only a change in income is too narrow and should be rejected.

The Commission’s policy stated in *Frayne* does a better job of balancing the interests of customers with the utility in this area. The *Frayne* policy has only been in place for approximately one-half a year and there has not been sufficient time for the Commission to evaluate the outcome. AA St. 1 at 22. The OCA submits that the *Frayne* approach should be

given time to work before the Commission set a blanket “one-strike and you’re out” rule for PGW customers.

6. **52 Pa.Code § 56.82 – Friday Terminations.**

PGW seeks a waiver of Section 56.82 that prohibits Friday terminations for non-payment of service. PGW M.B. at 46-49; 52 Pa.Code §56.82. This is one of the waiver requests that the Commission might consider granting. However, as the OCA stated in its Main Brief, PGW should first be required to demonstrate that customers have access to the full range of services that are necessary to appropriately respond to the loss of natural gas service, before this waiver can be granted. Once PGW makes such a demonstration, this waiver could be granted on a pilot basis and the effects and benefits of such a waiver could then be evaluated during the course of the pilot program.

7. **52 Pa.Code §§ 56.94, 56.95 – Waiver Of Certain Notice Termination Provisions.**

PGW also requests a waiver of the Chapter 56 provision that requires personal contact immediately prior to termination and the subsequent 48-hour notice posting requirement if personal contact is not made immediately prior to termination. For the reasons set forth in its Main Brief, the OCA submits that PGW has not provided sufficient support for this waiver request. OCA M.B. at 41-44. The OCA submits that this is one of the critical periods during the termination process. This notice informs the customer that loss of service is imminent and that arrangements must be made to cope with the loss of natural gas service. OCA M.B. at 43-44. Therefore, this notice is critical to protecting the public health and safety. PGW has failed to demonstrate that waiving this notice requirement is appropriate.

8. **Time Limits For Acting On Shutoff Notices.**

PGW is also seeking a modification of informal BCS guidelines that require a utility to complete termination of service within 30 days of the original shut-off notice. PGW M.B. at 51-53. As set forth in the OCA’s Main Brief, due to the large number of shut-off notices

that PGW must handle each year, a relaxation of the BCS guidelines may be appropriate. For that reason, the OCA does not oppose this requested waiver. OCA M.B. at 44-45.

9. **52 Pa.Code § 56.191 – Time Limitations For Restoration Of Service After Termination.**

PGW's final waiver request seeks to extend the time for restoration of service after a termination occurred that required a dig-up from one day to seven days. PGW M.B. at 53-55. Again, due to the PGW's unique circumstances, the OCA agrees that the one day requirement may be too stringent for this Company. However, the seven days proposed by PGW is too long. OCA M.B. at 46. Therefore, if the Commission decides to grant this waiver and extend the time limitation for restoration of service, the Commission should make a determination about what the appropriate length of time is for PGW to restore service for those customers who have made payment to the Company.

C. Universal Service Issues

Due to the expedited nature of this proceeding, PGW was unable to make a specific proposal with respect to redesign of the Company's Customer Responsibility Program ("CRP"). PGW intends to conduct a full review of the program and make a proposal to the Commission on a potential new program design. The OCA does not oppose a comprehensive evaluation of PGW's CRP program given the high cost of natural gas. However, the time provided for in this proceeding, and the lack of a specific proposal from the Company, precluded the OCA from developing any specific recommendations on the CRP program at this time.⁴ The OCA would welcome a more extensive inquiry into PGW's CRP program design and costs and looks forward to working with PGW and other interested parties on addressing these issues.

⁴ The OSBA did present two specific recommendations with regard to PGW's CRP program and cost recovery. OSBA M.B. at 6-10. The OCA has fully addressed these recommendations in its Main Brief and submits that both of the OSBA recommendations should be rejected. OCA M.B. at 48-50.

D. Commonwealth Court Remand Issues

1. Residential Field Visit Charge.

In its Main Brief, PGW claims that the Commission's conclusion that the costs of field visits are recovered from late payment charges and reconnection fees is incorrect. PGW M.B. at 77. PGW suggests that the Residential Field Charge covers the cost associated with "pre-termination" and "pre-restoration" costs, including salaries of approximately 40 field collections, transportation costs, and overhead. *Id.* PGW's justification as to the "reasonableness" of this charge is that the Company's pre-restructuring tariff contained the charge and it was included as part of the Company's total available revenue in a 2002 base rate case. *Id.* at 78. Finally, PGW claims that the Residential Field Charge was unopposed by the parties in PGW restructuring proceeding. *Id.*

As the OCA explained in its Main Brief, PGW has not explained how much of its costs would need to be recovered by the fee. OCA M.B. at 56. Moreover, PGW has not demonstrated that the costs of termination visits are not recovered through other expenses in base rates. *Id.* The OCA took issue with PGW's proposed residential field visit charge during PGW's restructuring proceeding and in its comments to PGW's proposed compliance tariff as set forth in the OCA's Main Brief. *Id.* at 55-56. The OCA submits that PGW still has not provided cost-justification for the \$10.00 residential field visit charge. Until such time as PGW provides this analysis, the residential field service charge should not be approved. Therefore, the OCA submits that the Commission correctly rejected the inclusion of this provision in PGW's tariff.

2. Judgments and Liens.

PGW's proposed tariff provision relates to denial of an application for service unless the applicant enters into a payment agreement for an outstanding lien or judgment for past unpaid balances to PGW. OCA M.B. at 52-53. As explained in the OCA's Main Brief, PGW is asking the Commission to enforce collection of a judgment or lien imposed by a civil court through imposition of a payment arrangement in order to restore service. *Id.* at 54-55. The Commission correctly concluded that based on case history and policy, utilities should keep

court-ordered liens and judgments separate from the customer's utility billing. *Compliance Order* at 5. Commonwealth Court case law suggests that once a utility obtains a lien or a judgment against a person's property, the utility cannot use the Commission process to collect on that lien or judgment. *Id.* at 54; *Gasparro v. Pa. P.U.C.*, 814 A.2d 1282, 1284 (Pa. Cmwlth. Ct. 2003).

PGW's own Main Brief in this proceeding demonstrates the concern expressed by the Commission about jurisdiction once a civil lien or judgment has been obtained by PGW. The Company asserts the following in its Main Brief:

The Commission will not have the burden of adjudicating disputes about the legitimacy of liens or judgments because it does not have jurisdiction over a lien or a judgment. For example, ***the Commission will not have the authority to hear complaints from the customer that the amount of the judgment is not really owing or that the lien should not have been entered.***

PGW M.B. at 80 [emphasis added]. This demonstrates the quandary that a customer, and the Commission, could find themselves. On the one hand, PGW is asking the Commission to enforce a rule that would require customers to enter into payment arrangements for amounts that are subject to a judgment or a lien. However, the Commission would be stripped of any jurisdiction to hear a customer's complaint that this amount is not owed, by virtue of the fact that this amount is subject to a judgment or a lien. The OCA submits that such a dichotomy should not exist.

Therefore, for the reasons set forth above and in the OCA's Main Brief, the OCA submits that conditioning service on payment or enforcement of an outstanding lien or judgment may not be within the Commission's jurisdiction. If the Commission, however, decides to allow PGW to include this provision in its tariff, the OCA submits that the conditions set forth in the OCA's Main Brief should be imposed upon PGW.

E. Senior Citizen Discount

For the reasons set forth in its Main Brief, the OCA supports the proposed means-tested Senior Citizen Discount as a reasonable compromise between balancing the costs of continuing the Senior Citizen Discount program with the City Council's stated desire to provide assistance to Philadelphia's senior citizen population. OCA M.B. at 56-57.

III. CONCLUSION

WHEREFORE, for the reasons set forth above and in the OCA's Main Brief, the Commission should adopt the recommendations of the Office of Consumer Advocate with respect to the issues in this investigation proceeding.

Respectfully submitted,



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CERTIFICATE OF SERVICE

Re: Investigation into Financial	:	
Collections Issues Regarding the	:	Docket Nos. P-00042090
Philadelphia Gas Works	:	R-00049157
	:	M-00021612
	:	P-00032061

I hereby certify that I have this day served a true copy of the foregoing document, Office of Consumer Advocate's Reply Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 23rd day of July, 2004.

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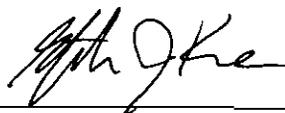
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Re: Investigation into Financial and Collection Issues
Regarding the Philadelphia Gas Works
Docket Nos. P-00042090, R-00049157, M-00021612 &
P-00032061

Dear Secretary McNulty:

Enclosed are the original and nine copies of Philadelphia Gas Works' Reply Brief in the above-referenced matter. As evidenced by the attached Certificate of Service, all parties of record have been served in the manner indicated.

If you have any questions, please contact me at your convenience.

Sincerely,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/jls
Enclosures

cc: Hon. Charles E. Rainey, ALJ (w/enc)
Certificate of Service (w/enc)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Investigation into Financial and Collections : Docket Nos. P-00042090
Issues Regarding the Philadelphia Gas Works : R-00049157
: M-00021612
: P-00032061

Re: Petition of Philadelphia Gas Works for :
Waiver of Public Utility Commission : Docket No. P-00042117
Customer Service Rules :
:

PHILADELPHIA GAS WORKS REPLY BRIEF

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I. INTRODUCTION AND SUMMARY

PGW hereby responds to the briefs of the various parties regarding its Petition for Chapter 56 Waivers, proposed means tested Senior Citizen Discount, Universal Service Program cost recovery and the Restructuring Proceeding tariff issues. As detailed herein, the positions of the opposing parties, predominantly the Office of Consumer Advocate (“OCA”), Action Alliance and the Office of Trial Staff (“OTS”), contain overarching flaws that compel their rejection by the Commission. PGW exposes those flaws in summary here:

- PGW’s Financial Condition: There can be no dispute about the Company’s precarious financial condition. Taking the Commission’s CRRC Order out of context or simply ignoring the facts cannot detract from the hard, cold truth of the Company’s financial numbers. Numbers that are, in fact, only getting worse. The expertise and independent, unbiased opinions of Standard and Poor’s, Fitch and Moody’s and the actions of the financial community can not be disputed -- PGW’s financial situation is very bad.
- Failure to Balance PGW’s Financial Integrity: As the Office of Small Business Advocate (“OSBA”) rightly points out, the parties opposing PGW’s Chapter 56 waiver requests focused exclusively on the impact of the proposed waivers on non-paying customers.¹ In so doing, the OCA, Action Alliance and OTS blindly ignored PGW’s financial integrity – and this Commission’s instruction to balance the same with customer protections.² Their one-dimensional focus also ignores the effect that a rejection of PGW’s waiver requests will have on remaining customers who pay their bills on time and in full, the specific concern that these same parties urged the Commission to focus on in the CRRC proceeding.
- A Downgrade to Junk Bond Status Cannot be Trivialized: These parties also demonstrate a complete lack of regard for the potential of an imminent downgrade of PGW by the rating agencies to junk status. It’s not the first time. In the 2002 extraordinary rate case, the Commission noted that, while some of these same parties trivialized the downgrade to junk status, it did not have that luxury and had to ensure PGW’s financial integrity as part of its duty to protect the public interest.³ In this case, the Philadelphia Public Officials should be lauded for

¹ OSBA MB at 11.

² June 2nd Order at 5, n.2.

³ *Petition of Phil. Gas Works for Extraordinary Rate Relief Pursuant to 66 Pa. C.S. § 1308(e)*, R-00017034F0002 (April 12, 2002).

grasping this same point, and recommending approval of the waivers in order to avoid the devastation wrought by a further downgrade.⁴

- The Opposing Parties' Positions Are Not Consistent With the Views of Ratepayers: In reflexively opposing virtually every PGW recommendation and any change to Chapter 56 for anyone, the opposing parties show that their positions are not consistent with the views of the ratepayers of Philadelphia and the desires of the vast majority of the constituents they claim to represent. It is clear, however, that every elected official who has participated in this proceeding has supported adoption of the proposed Chapter 56 waivers. That reality was given voice by the people of Philadelphia and their elected officials during public input hearings. For instance, a direct consequence of the positions advocated by the OTS, OCA and Action Alliance is that paying customers will be footing the bill for the non-payers. Yet, the universal opposition to this result was expressed by Ms. Mary Carroll:

Cut the gas off, the ones who don't pay the gas bill. I don't have the money to pay mine, but I was taught to pay my bills. I do without other things. They don't pay because you don't make them pay it and your hurting the other people who pay their bills.⁵

Likewise, these parties act as though the "name game" is something dreamed up by PGW. Not according to the Hon. State Representative Angel Cruz:

[T]he problem is that there's a lot of hardworking people that are paying gas bills and you have other folks that are not paying and when they get their gas shut off they put it in someone else's name. Why can't they put a lien on that property until they pay it so there's no gas for no one?⁶

Finally, these parties raise the strongest objection to the proposal to eliminate the winter moratorium for higher income customers. But, here again, a needed dose of reality is provided by Hon. State Representative Mark B. Cohen:

The vast majority of people who do not pay their bills during the winter are believed not to be the vulnerable;

⁴ Philadelphia Public Officials ("PPO") MB at 8-11.

⁵ CRRC Tr. 188.

⁶ CRRC Tr. 42.

but to be a class of people who have continually and professionally exploited the system at our expense.⁷

It was comments like these that prompted the passage by the House of Representatives of a package of Chapter 56 revisions that, if anything, would provide for even more liberal revisions to the present PUC-mandated rules on an industry-wide basis.⁸ These and other realities completely undermine the positions of the OCA, Action Alliance and OTS as to the waiver requests.

- The Role of Chapter 56: These parties make two fundamental misconceptions about the role of Chapter 56 in PGW's collections: (1) they assume that PGW is claiming that the rules harm its collections and must be eliminated; and (2) they credit the rules for the Company's recent collections "success" (which is apparently defined as coming close to hitting historical averages that are, by the way, woefully below all other NGDCs). As to the first point, PGW has never made this claim. The Company's position, supported by the evidence, is that the present inadequacy of its cash and liquidity and the insistence by the rating agencies that there must be a material improvement in those areas, make clear that PGW must find a quick and reasonably predictable way to do more. Loosening the rules where they are outdated or tilted too far in favor of the non-paying customers is necessary for PGW to achieve the "material" improvement in these areas, as demanded by the rating agencies. As to Chapter 56 getting the credit for the recent uptick in collections, PGW, through cross examination, thoroughly refuted the notion that the rules can be credited for FY 2004's success, just as they cannot be blamed for the precipitous drop from the highs (97%) in FY2002 (pre-Chapter 56).
- Just Say No & No Income is Too Great: It is not appropriate to "Just Say No" to all the proposals made by PGW. Yet, that appears to be exactly what these parties are doing in this case. In many instances, the parties note that the current rules allow PGW to achieve virtually the same result on a case by case basis. Nonetheless, they oppose a general blessing to achieve those results, ignoring the fact that the number of customers that PGW would have to deal with on a case-by-case basis dwarfs the number for any other utility and fails to provide the uniformity and predictability – and fairness – that a change in rules delivers. Likewise, the parties apparently believe that no income level is too great to receive full protection from Chapter 56, PGW's waiver requests go to great lengths to affect only higher income customers.
- The Burden of Proof Allegation: Finally, on issue after issue, the opposing parties simply assert that PGW has not met its burden of proof. In fact, PGW

⁷ CRRC Tr. at 69.

⁸ H.B. 869. See, PGW MB at 5.

placed testimony and evidence on the record supporting its position on each and every issue, and, in many instances, the record reflects no evidence to the contrary. While PGW has the ultimate burden of proof, once it placed evidence on the record supporting its position, burden of persuasion shifted to PGW's opponents. Those parties presented virtually no material evidence in response. By that standard, PGW must prevail on this record.

II. CHAPTER 56 WAIVER PETITION

A. The Commission Should Follow the Recommendation of the Public Officials that PGW's Waiver Petition Must be Approved to Avoid a Bond Downgrade to Junk Status

The OTS, OCA and "Action Alliance" (hereinafter the Opposing Parties) have continued their vehement opposition to virtually every one of the nine requests for waiver of Chapter 56, provisions of the Public Utility Code or BCS administrative rules. These parties claim that PGW has not shown that it will suffer an "unreasonable burden" and that the Company's financial status is not so bad that Chapter 56 needs to be waived in order to provide additional collections to help the Company out of its cash crisis. For example, the OCA takes the PUC's conclusions in the CRRC proceeding out of context and asserts that "PGW's financial position is not as bleak as [PGW] suggests, and a waiver of Chapter 56 provisions to the extent requested by PGW is unnecessary."⁹ OCA characterizes the Commission's recent CRRC Order as rejecting any notion that PGW's financial condition requires "drastic action."¹⁰

The OTS, on the other hand, readily admits that "the Company's financial condition is well documented and not entirely disputed by OTS."¹¹ OTS's own witness testified that "PGW must improve its cash flow and protect its bond ratings in order to issue additional bonds this fall at the lowest possible cost."¹² Further, OTS agreed that "the Company must receive payment from all ratepayers that demonstrate the capability of paying their bill [and] the demographic makeup of the Company's service territory and the associated hardships" makes such collections

⁹ OCA MB at 15.

¹⁰ *Id.*

¹¹ OTS MB at 51.

¹² OTS St. 1 (Weakley) at 25.

difficult.¹³ Nonetheless, OTS stubbornly concluded that “this does not relieve the Commission from protecting consumer rights as provided for in its regulations.”¹⁴

Suffice it to say that the Opposing Parties’ arguments are woefully mistaken and inconsistent. Just this week PGW filed a Petition for Reconsideration of the Commission’s CRRC Order, a copy of which is attached hereto as Appendix “A,” which explained that, not only were things not good, they are going in the wrong direction. The Petition, supported by a verified statement of PGW’s Senior Vice President of Finance, shows that:

- PGW’s end of year cash levels have dipped to \$28 million (from the \$31-\$36 million predicted on the record in the CRRC proceeding), even including the waiver of the \$18 million City Payment and the effects of a \$34.5 million gas storage payment deferral transaction.
- If the effects of the one-time, gas storage payment deferral transaction are excluded from the analysis, PGW would end the year with liquidity (cash and available short term borrowing) of **negative** \$6.5 million.
- PGW will not be able to insure any more than \$25-\$50 million of its originally contemplated \$150 million fall bond issuance, and may not be able to obtain insurance for any portion, meaning that the rest of the bonds would have to be issued at BBB- rates. Instead, PGW is presently planning to limit the total amount of the bonds to \$125 million. While this will mean a reduction in the Company’s capital program, no specific schedule of cuts has been determined.
- As indicated in PGW’s Main Brief, Standard and Poor’s has issued a bulletin expressing concern about the Company’s present financial status and the effect of the PUC’s rejection of the proposed CRRC and indicating that it intends to scrutinize the Company very closely.¹⁵

The real question is whether the Commission wishes to accept the blithe assurances of the Opposing Parties that all is well at PGW, ignore this evidence to the contrary and, thereby, risk the catastrophe of a downgrade. PGW asserts that the risks of that approach are enormous and cannot be justified. As the Philadelphia Public Officials cogently stated:

¹³ OTS MB at 51.

¹⁴ *Id.*

¹⁵ PGW MB, App. A.

PGW has demonstrated, and the Philadelphia Public Officials agree, that the loss of PGW's investment grade bond rating would be a disaster for the Company, its employees and, most of all, its customers, dramatically increasing PGW's cost of service at the least, and, at worst, threatening the Company's ability to make the capital improvements necessary to continue to provide safe, reliable and adequate service.¹⁶

As a result of this conclusion, the Public Officials supported PGW's Chapter 56 waiver requests as "reasonable and supported by the record evidence in the proceeding."¹⁷ PGW believes that this conclusion is correct and fundamentally states the key reason why the Commission should follow the recommendation of the Public Officials. Without exception, the opponents of PGW's Chapter 56 waiver requests have failed to take any account of PGW's financial situation, the need to avoid a bond downgrade and the justification for modifying existing procedures in order to increase the Company's collections and cash flow over and above "status quo" levels. Moreover, while the Public Officials correctly concluded that PGW's requests were supported by the record, the Opposing Parties' urgings to the contrary are based on a complete refusal to recognize the evidence that was submitted by PGW which supported each and every one of its waiver requests. In other instances, the Opposing Parties have either misunderstood or misstated the specifics of the waiver requests or the evidence presented in support of the requests or have done both.

All in all, the Opposing Parties' vehement opposition appears to stem from a policy position that, except for isolated individual cases of "hardship," Chapter 56 should never be changed under any circumstances. For example, the only waiver request acquiesced to by any of the opposing parties – the OCA – was a request that PGW be permitted more time in which to complete terminations, which would modify an administrative rule and not a regulation. The Opposing Parties' staunch refusal to acknowledge the special circumstances involving PGW and the need to take special action to avoid a disaster should be sufficient for the Commission to reject their arguments outright and to focus on the Company's careful justification for each and every one of its Chapter 56 waivers, designed to substantially improve its cash working capital in

¹⁶ Public Officials MB at 4-5.

¹⁷ Public Officials MB at 5.

a very short period of time. While the Company is very willing to consider other alternatives in addition to these Chapter 56 waivers, it is important that the waiver requests be granted as the first step, and as soon as possible.

1. The CRRC Order Is Not Inconsistent With a Finding That PGW's Present Financial Condition Justifies Chapter 56 Waiver Relief.

It should be plain that there is nothing in the PUC's recent CRRC decision that contradicts this demonstration of the current financial crisis facing the Company. The Commission's decision declining to adopt PGW's requested CRRC was not in any way a rejection of the notion that PGW has serious cash flow issues which must be improved in order to avoid a downgrade to junk bond status.¹⁸ While the Commission found that the CRRC was not needed because PGW's collections had improved to around historic levels, it did not in any way reject PGW's assertion that the rating agencies were demanding material improvements in cash flow and collections in the short term in order to stave off downgrade. What the Commission did find was that the CRRC, as a backstop mechanism, would not have provided any additional cash flow at the end FY 2004 and very little prior to the winter of FY 2005.¹⁹

Moreover, the Commission's Order incorrectly concluded that the Company's year end cash position was projected to be greater than actual projections show.²⁰ As explained in PGW's Petition for Reconsideration, the Commission may have erroneously concluded that PGW's end-of-year cash might be as high as \$31-\$36 million plus an additional \$30 million, or \$60 million; in fact its original projection of \$31-\$36 million included the \$30 million gas payment deferral and PGW is now projecting just \$28 million in year end cash or liquidity. If the \$34.5 million one-time gas storage payment deferral transaction is removed, PGW will actually finish the year with negative \$6.5 million in cash. This is why PGW is on the brink of being downgraded.

The Commission faces a stark choice: it can either accept the representations of the *Opposing Parties, who blithely dismiss PGW's financial condition as "exaggerated" and not*

¹⁸ CRRC Order at 10. The PUC acknowledged the serious consequences of a downgrade.

¹⁹ See, CRRC Order at 28.

²⁰ CRRC Order at 10-11.

justifying special relief in the form of modified billing and collection standards, or it can listen to the unbiased statements of the market and the rating agencies who have no axe to grind other than to protect the investors in PGW's bonds. Without the Company's Chapter 56 waivers, it will be left with no ability to meet the S&P directive for a "material improvement in collections and cash margins" in the near term.

B. PGW Has Satisfied the Legal Standard Governing Its Waiver Petition.

1. Several Parties have Misstated the Standard for PGW's Waiver Request

As explained in PGW's Main Brief,²¹ the witnesses for the OCA, Action Alliance and OTS all ignored the standard for considering PGW's waiver request as set forth in the Commission's June 2, 2004, Order: that the "alternate standard or procedure adequately balances consumer protection rights with PGW's financial integrity."²² In their briefs, these parties go one step further and actually misstate the standard, claiming that PGW's request must be viewed under Section 56.222 of the Commission's regulations and that the Company must show "unreasonable hardship" as a result of compliance with each provision of Chapter 56 sought to be waived.²³

Worse still, Action Alliance affirmatively *misrepresents* the contents of the Commission's June 2nd Order as to the standard PGW must meet regarding the waivers, placing the term "unreasonable hardship" in quotes, attributing it to the Commission and suggesting that it is text quoted *from* the Order.²⁴ In truth, the term "unreasonable hardship" appears nowhere in the Commission's June 2nd Order, and the Commission has never identified that test as the standard by which PGW's waiver requests will be judged.

²¹ PGW MB at 6-8.

²² June 2nd Order at 5, n.2.

²³ OTS MB at 50; OCA MB at 7; Action Alliance at 6-7.

²⁴ Action Alliance MB at 7.

Applying the actual text of the Commission’s Order, PGW set forth the standard for deciding its waiver request in its Main Brief.²⁵ The standard is essentially a public interest test, and states that the Commission is required to balance between ensuring customer protections and preserving PGW’s financial integrity.²⁶ Consistent with PGW’s interpretation, the Philadelphia Public Officials articulated the standard for the Company’s waiver request this way:

PGW clearly has the “burden of proof” of adducing facts which justify its specific requests. PGW must show that its financial circumstances and financial prospects demonstrate an impending crisis justifying its requests for waivers or modifications of Chapter 56 regulations.²⁷

Significantly, the Public Officials agree that PGW has satisfied this standard.²⁸

The Commission’s standard is particularly appropriate given the fact that the Company’s request is not based on Section 56.222. As PGW has noted, this section, used to make typical waiver requests of Chapter 56 on an individual basis, is inapplicable. Section 56.222 relates to “temporary exemptions in exceptional cases” upon the application of a person or utility and the showing of “unreasonable hardship.”²⁹ Such a test applies to and works for waiver requests in the context of specific customer service scenarios impacting individuals or a limited number of customers. The test is woefully lacking in terms of a request for a comprehensive modification of the rules for a utility’s entire customer base. The scope of PGW’s payment and collections problems, as described by the OSBA, is “enormous,”³⁰ and therefore, the use of Section 56.222 is not appropriate here.

²⁵ PGW MB at 6-12.

²⁶ June 2nd Order at 5, n.2.

²⁷ PPO MB at 4.

²⁸ PPO MB at 8-11.

²⁹ 52 Pa. Code § 56.222.

³⁰ OSBA MB at 12; *see* PGW St. CRRC-5 at 4, 16; CRRC Tr. 355, 367.

Moreover, the statutory basis of PGW's request, Section 2212 of the Public Utility Code,³¹ cannot be superceded by a regulation.³² Action Alliance disputes this elementary rule of law, claiming that, even when proceeding under Section 2212(c) of the Public Utility Code, the requirements of Section 56.222 are supreme.³³ Tellingly, Action Alliance offers no legal authority for its claim; nor could it, as none exists.

Ultimately, though this debate is important, it is somewhat academic. Even if the Commission decides to look for "unreasonable hardship," the Company can easily pass the test. PGW has proven that it must materially improve its collections and cash margins in the near term, or it will be downgraded to junk status by the bond rating agencies.³⁴ All parties – and the Commission – agree that a downgrade to junk bond status would constitute unreasonable hardship to both the Company and its customers.³⁵ While it is true that PGW has not claimed that compliance with Chapter 56 has specifically *harmed* it or its collections,³⁶ the evidence is clear that loosening those requirements in the manner requested by the Company will enhance its

³¹ PGW MB at 8-10.

³² *Bankers Trust Co. v. Foust*, 621 A.2d 1054, 1057 (Pa. Super. 1993) (Where . . . there is a conflict between a statute and a regulation, the regulation must give way). PGW has asserted that its waiver request was based on the statutory authority found at Section 2212(c) and (h)(1). The Commission, in its July 8, 2004 Order denying PGW's Motion to have its Waiver and CRRC Petitions simultaneously decided, noted that the restructuring proceeding concluded in 2003 and questioned the applicability of subsection (h)(1). July 8 Order at 5, n.4. However, while a final order has been issued, there are many issues from the restructuring proceeding that remain open in this case. The Commonwealth Court reopened the proceeding upon its remand of the tariff issues, and the SCD also represents a continuation of an issue from the restructuring proceeding and has borne that docket number since its inception. Further, the evaluation of PGW's universal service programs, included in this proceeding by the Commission, could be considered an extension of the restructuring proceeding where they were fully examined. Ultimately, even if the Commission determines not to act under subsection 2212(h)(1), Section 2212(c) provides the Commission with complete authority to approve PGW's waiver requests.

³³ AA MB at 6, n. 4.

³⁴ PGW MB at 12-16.

³⁵ *Petition of Phil. Gas Works for Extraordinary Rate Relief Pursuant to 66 Pa. C.S. § 1308(e)*, R-00017034F0002 (April 12, 2002); CRRC Order at 10; *see, e.g.*, PPO MB at 4.

³⁶ PGW MB at 20. Indeed, PGW debunked the notion that Chapter 56 could be blamed or credited for its collections failures or successes. Tr. 721-24.

collections and cash receipts, possibly by as much as \$30 million,³⁷ and help it avoid the hardship of a downgrade to junk status. Under these circumstances, even if the unreasonable hardship test is found to apply, PGW has clearly satisfied it as the Philadelphia Public Officials and OSBA agree.³⁸

2. Section 2212(c) Does Not Contain an Unconstitutional Delegation of Legislative Authority to the Commission.

While the OSBA agrees that the Commission has the authority to grant PGW's Chapter 56 waiver requests and generally supports the proposals,³⁹ it further concludes that Section 2212(c) of the Public Utility Code is an unconstitutional delegation of unfettered discretion to the Commission.⁴⁰ This is incorrect.

First, the Commission has no authority to decide the constitutionality of a provision of the Public Utility Code.⁴¹ The General Assembly has in no manner conferred to the PUC the power to determine what is or is not constitutional. Accordingly, the OSBA's contention is beyond the Commission's jurisdiction and scope of authority.⁴²

³⁷ PGW Exh. CP-1 at 4 and App. A. Action Alliance overstates the Commission's holding in the CRRC Order when it alleges that the PUC "declared the need for PGW to provide a greater level of quantitative precision than mere 'estimates' in support of measures involving the balancing of PGW's financial integrity against customer protections." Action Alliance MB at 7 (citing the CRRC Order at 19). However, the CRRC Order simply raised a concern over the use of estimates in the context of calculating an automatic adjustment surcharge that had no true-up mechanism. CRRC Order at 19. There was no suggestion that, in a case dealing with waiver requests, an estimate of the additional revenues collected or costs saved by the waivers would be insufficient. Indeed, amazingly, just sentences before its "mere estimates" claim, on the very same page (p. 7), Action Alliance cites to the Commission's July 8 Procedural Order on the Waiver Petition and notes that one of the facts that the Commission found material to this proceeding was the "estimated cost savings resulting from the waivers." July 8 Procedural Order at 4 (emphasis added). Having declared "estimates" of savings to be material, the Commission certainly has not precluded their use in conducting the balance between customer protections and PGW's financial integrity.

³⁸ PPO MB at 4, 8-11; OSBA MB at 11, 17.

³⁹ OSBA MB at 11, 15-18.

⁴⁰ *Id.*

⁴¹ *Feigley v. AT&T Communications of PA, Inc.*, C-00981434, Opinion and Order entered (April 20, 2001) at 27 (quoting ALJ Cocheres Recommended Decision).

⁴² *Id.*

Second, the OSBA's contention that Section 2212(c) grants the Commission unfettered discretion is simply not factually correct. The Commission has explicitly enunciated that waiver requests under Section 2212(c) are governed by a public interest standard.⁴³ While it is true that any delegation of power or discretion to an administrative agency is unconstitutional if the legislature fails to provide necessary standards,⁴⁴ in the instant case, a standard to guide the PUC's application of Section 2212(c)'s waiver provision does in fact exist and has been implemented throughout these proceedings.⁴⁵

Moreover, as the OSBA admits, the rules of statutory construction establish the presumption that, in enacting a statute, the General Assembly does not intend to violate the Constitution of the United States or of the Commonwealth.⁴⁶ Furthermore, in *PPL Energyplus*, the Commonwealth Court emphasized that "a party arguing the unconstitutionality of a legislative enactment has a heavy burden to sustain the claim."⁴⁷ Given the strong presumption of constitutionality, the strenuous burden facing the OSBA and the fact that a standard exists for the exercise of its waiver discretion, the Commission should reject the OSBA's constitutional challenge.

As to the merits of the claim, the Commonwealth Court in *PPL Energyplus* enumerated the factors to be considered in determining whether an unconstitutional delegation of power has been made to an agency:

Where the standard fixed by the Legislature is not arbitrary or unlimited, but is definite and reasonable, the delegation of power or discretion will be sustained as constitutional. In considering the standard, regard must be had to [1] the purpose and [2] scope of the [legislation], [3] the subject matters covered therein, [4] the

⁴³ CRRC Order at 22.

⁴⁴ See OSBA MB at 15, citing *PPL Energyplus, LLC v. Commonwealth of Pennsylvania*, 814 A.2d 861 (Pa. Cmwlth. 2003).

⁴⁵ June 2, 2004 Order at 5, n2.

⁴⁶ See OSBA MB at 15; 1 Pa. C.S. § 1922(3).

⁴⁷ *PPL Energyplus, LLC v. Commonwealth of Pennsylvania*, 814 A.2d 861, 863 (Pa. Cmwlth. 2003) (citing *James v. Southeastern Pennsylvania Transportation Authority*, 477 A.2d 1302 (Pa. 1984)).

duties proscribed and [5] the broad and narrow powers granted, because those factors will often determine whether or not a sufficiently clear, definite and reasonable standard has been established.⁴⁸

Any PUC determination is limited by its duty to act in the public interest, essentially the same standard the Commission articulated in its June 2 Order.⁴⁹ Therefore, one limited purpose of Section 2212(c), as stated in the July 8 CRRC Order, is to allow the Commission the discretion to waive provisions of the Public Utility Code only if it is in the public interest.⁵⁰ In *PPL Energyplus*, the Commonwealth Court seized upon this limitation to find that the Section 2809(e) of the Public Utility Code did not constitute an impermissible delegation of power.

We do not agree that the PUC's discretion. . . is unfettered. The PUC may impose the Code's requirements upon EGS companies only when such requirements are necessary to maintain the quality of service, *to protect the public or to ensure the safety and reliability of electric service. . . .* [T]he PUC must be prepared to defend its action in light of these standards.⁵¹

Section 2212(c) also has a limited scope, allowing the PUC to exercise its waiver power only for city natural gas distribution operations in the context of applying the provisions of Title 66 (and excepting Section 2212, itself). Notably, the scope is limited even further by the fact that PGW is the only entity in Pennsylvania that falls within the Code's definition of "city natural gas distribution operation."⁵² Significantly, this delegation of power is no more broad than any other statutory provision that allows the PUC the discretion to act in the public

⁴⁸ *Id* at 863 (citations omitted).

⁴⁹ See, e.g., *Margaret Peschka v. Equitable Gas Company*, 2002 Pa. PUC LEXIS (2002) 10, *5 ("To carry out our duty of protecting the public interest . . ."); *Petition for Streamlined Form of Regulation and Network Modernization Plan of Citizens Telephone Company of Kecksburg*, 1998 Pa. PUC LEXIS (1998) 139, **44-45. ("This Commission understands its statutory duty to protect the company, the customer and the public interest"); *Gaetano D. and Ronda S. Piluso v. The People's Natural Gas Company*, 1996 Pa. PUC LEXIS (1996) 49, *9 ("Such action is consistent with the Commission's duty to protect the public interest").

⁵⁰ CRRC Order at 22.

⁵¹ *PPL Energyplus, LLC*, 814 A.2d at 865 (emphasis added).

⁵² 66 Pa. C.S. § 102.

interest.⁵³ No arbitrary or unlimited power is bestowed upon the Commission by Section 2212; it simply provides a method for the PUC to waive otherwise applicable requirements when the same is requested by the Company and consistent with the public interest.

Finally, the section's authority to waive provisions for a limited class constitutes, in effect, a delegation to the PUC to negatively regulate in a narrow area. The General Assembly explicitly granted the Commission the power to make necessary regulations under Section 501(b) of the Code.⁵⁴ Nothing prevents the General Assembly from granting the Commission the limited authority of waiving statutory provisions or regulations, pursuant to Section 2212(c), for a limited class, if it is in the public interest. Thus, the OSBA's contention that such a grant is an impermissible delegation of power to the Commission is without merit and should be denied.

C. The OCA's "Alternatives" Offer No Real Relief for PGW's Cash Crisis.

The OCA urges the Commission to reject PGW's requests and, instead, adopt its alleged alternatives to PGW's waiver requests,⁵⁵ but, as PGW has already shown in its Main Brief and on the record, these measures are inadequate to address the Company's collections and cash receipts dilemma.⁵⁶ In fact the OCA was not able to say with any assurance whether any of its alternatives would provide positive benefits to PGW's collections and cash working capital. In one case (mandatory budget billing for all residential customers) PGW showed that there is a real potential that its implementation would hurt the Company's cash flow. While these alternatives

⁵³ See for example: 66 Pa. C.S. § 2208(b) (Requirements for natural gas suppliers - "A license shall be issued to any applicant. . . if it is found that the applicant is fit, willing and able to perform properly the service proposed and to conform to the applicable provisions of this title . . . and that the proposed service, to the extent authorized by the license, will be consistent with the *public interest*"); 66 Pa. C.S. § 513 (Public letting of contracts - "Whenever the commission deems that the *public interest* so requires, it may direct, by regulation or order, that any public utility shall award contracts or agreements for the construction, improvement, or extension, of its plant or system . . ."); 66 Pa. C.S. § 1103 (Regarding procedure to obtain certificates of public convenience - "A certificate of public convenience shall be granted . . . only if the commission shall find . . . that the granting of such certificate is *necessary or proper for the service, accommodation, convenience, or safety of the public*"); 66 Pa. C.S. § 703(b) (Fixing of hearings - "The commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the *public interest*") (emphasis added).

⁵⁴ 66 Pa. C.S. § 501(b).

⁵⁵ OCA MB at 16-21.

⁵⁶ PGW MB at 17-19.

may be worthy of careful study they cannot be a replacement for the well-supported Chapter 56 waivers PGW has proposed.

PGW offers the following summary replies to the OCA's claims:

- *Mandatory EFT Payment for Certain Payment Arrangement Customers.* As PGW explained in its Main Brief, this proposal while potentially beneficial, would require significant implementation time and effort, and offers no guarantee of providing any meaningful assistance to the Company's collections needs.⁵⁷ Mr. Colton admitted that he was aware of no public utility that has a mandatory EFT requirement for customers on payment plans⁵⁸ and that the record contained no assessment of what might be the potential benefit of the EFT requirement.⁵⁹ As explained by Mr. Gyory for PGW, these approaches are novel and may not produce positive additional collections and cash working capital.⁶⁰ Moreover, for the EFT proposal to work, a customer must have funds in his checking account, which is far from guaranteed. Additionally, after the implementation of the necessary software already scheduled for this fall,⁶¹ this proposal would still require several months of work-out and training to be put into effect – making it too late to be effective.⁶² Finally, Mr. Colton's analogies to experience using EFT to collect tax delinquencies is truly an apples to oranges comparison.⁶³
- *Mandatory Budget Billing for All Residential Customers.* As to budget billing, Mr. Gyory exposed a fundamental flaw in the assumption behind the OCA's proposal: that people on budget billing have far superior payment practices. The record reflects that the delinquency rates for payment plan customers are similar

⁵⁷ PGW MB at 17-18.

⁵⁸ Tr. 792.

⁵⁹ Tr. 795-97.

⁶⁰ PGW St. CP-1R at 7. As to the EFT proposal for Level 3 and 4 customers on payment plans, the record evidence in this matter reveals that of the Company's 133,000 customers in arrears on April 1, only approximately 9,700, representing some \$6 million in receivables, would fall under the EFT requirement. PGW St. CRRC-5 at 16. Even if all of those customers were placed on EFT and the success rate increased from 9% to 50%, the net additional collection would be under \$3 million. PGW MB at 18. This calculation likely overstates the financial effect because the number of non-banking PGW customers, who do not use checking or savings accounts, appears to be roughly 7% of the entire residential class. PGW St. CP-1R at 8.

⁶¹ *Id.* at 7.

⁶² *Id.* at 7-8; Tr. 796-97.

⁶³ PGW MB at 18.

for budget billed (62%) and non-budget billed customers (75%)⁶⁴ despite the fact that the customers have chosen this option. Furthermore, the mandatory budget bill option presents significant cash flow problems for the Company which would exacerbate, not improve, current problems. As admitted by the OCA's Mr. Colton, the Company is too close to winter to implement this initiative without causing PGW to suffer a massive cash flow hole.⁶⁵ Additionally, in this environment of constantly increasing natural gas prices, PGW would continuously be behind in the recovery of gas cost increases, as its GCR can be adjusted quarterly, but customers' budgets for budget billing may only be increased three times annually.⁶⁶

- *Credit Scoring in lieu of Uniform Deposit Rules.* Finally, the OCA advocates the implementation of credit scoring as an alternative to PGW's proposal for uniform deposit requirements.⁶⁷ However, OCA's persistence in advocating this proposal ignores the hard truth and undisputed evidence that it is simply unworkable at the present time.⁶⁸ As Mr. Gyory testified: "PGW cannot implement credit scoring until the 3d quarter of 2005 at the earliest, and even then implement the concept only as a pilot. I do not think that dismissing the physical impossibility of initiating this approach until late next year and stating that PGW should drop everything else to implement his preferred alternative is reasonable. PGW would have to stop several systems changes to do that, including changes that will permit PGW to automatically request a deposit from existing customers who are in arrears and several enhancements to its payment agreement program."⁶⁹ The systems changes that are "ahead of" the implementation of credit scoring portend real collections improvement for the Company. The OCA has no basis or evidentiary support for it to dictate to the Company how its collections efforts *should be managed or that the OCA's proposed credit scoring system changes are more important than the other changes being implemented to enhance collections.*
- Ultimately, credit scoring is just a prediction. Credit scoring is not a guarantee against PGW being left holding the bag by non-paying or slow paying customers, and thus it will by definition not be as effective as the Company's uniform deposit proposal. PGW has committed to doing a credit scoring pilot, and should be permitted to proceed in accordance therewith.

⁶⁴ PGW St. CP-1R at 9-10.

⁶⁵ Tr. 796.

⁶⁶ Tr. 714-16. A more frequent revision of the "budget" would eliminate any positive advantage to the billing approach.

⁶⁷ OCA MB at 20-21.

⁶⁸ PGW Sts. CP-1 at 8 and CP-1R at 18.

⁶⁹ PGW St. CP-1R at 18.

D. Chapter 56 Can Not Be Used As An Implicit Subsidy Mechanism.

On an overall basis, the arguments of the Opposing Parties against virtually every PGW Chapter 56 waiver request have a common theme: despite PGW's attempt to focus only on higher income customers, the suggestion that any portion of Chapter 56 should be modified in any way allegedly creates the potential that customers could be denied service "unfairly." These parties allege that customers in income Levels 3 and 4, despite being above the level deemed to be deserving of protection by the PUC and by the federal government,⁷⁰ include "the working poor" who in many cases may not be able to: pay the full amount of their arrearage in order to be restored after a termination;⁷¹ enter into or stick with a payment arrangement in the winter in order to avoid termination;⁷² come up with the full amount of a deposit in order to initiate service,⁷³ or comply with payment arrangements that require the payment of arrearages over one to two years.⁷⁴

Moreover, not content with expanding the PUC's low income guidelines for the working poor, the OCA has also suggested that even customers with higher incomes deserve Chapter 56 protection because "even some customers with higher incomes can be faced with emergencies, such as unexpected medical expenses"⁷⁵ Requiring such higher income customers to pay for past arrearages, or to adhere to payment arrangements that require payment in one to two years, is unfair, the OCA asserts, because "without the ability to enter into a payment arrangement in order to restore service, customers could be left without heat during the winter heating season even though they may now be able to pay for service."⁷⁶

⁷⁰ See, PGW MB at 22-23.

⁷¹ See, OCA MB at 22; AA MB at 15-17.

⁷² See, OCA MB at 26-27; AA MB at 18.

⁷³ See, OCA MB at 29-30; AA MB at 21.

⁷⁴ See, OCA MB at 36; AA MB at 30-31.

⁷⁵ OCA MB at 23.

⁷⁶ OCA MB at 24 (emphasis added).

Finally, to the extent that PGW has suggested that customers whose income exceeds established guidelines must turn to local social service agencies for assistance, rather than remaining PGW customers to subsidize their public utility service, OCA chastises PGW as ignoring “PGW’s public service obligation. PGW as a regulated public utility, has been given an exclusive franchise to serve within its service territory and is under an obligation to provide safe and adequate service and to avoid unreasonable discontinuance of service.”⁷⁷ OCA ignores the long history of PGW’s universal service programs and ignores the fact that the regulatory process mandates that when some customers get free gas, that failure to pay shifts a burden to other customers who, from the record of the public hearings, clearly disagree with the OCA. They want a *more aggressive tightening of the rules*.

An unstated assumption undergirding all these arguments is that Chapter 56 and PGW’s status as a “regulated utility” obligates it to provide gas service to customers who cannot (or will not) pay for it, regardless of the reason for their non-payment or their income status. Unstated by the Opposing Parties are the realities that customers receive a service and have an obligation to pay in a timely manner, and second, that the regulatory process is a balancing of interests and needs of the utility and all of its customers. Given the current crisis at PGW, the balance must now be adjusted. For a municipal utility like PGW that has no shareholders, in each instance in which PGW is prevented from enacting a practice that enhances the chances of receiving payment from non-payers, the burden of paying for the service transfers to the remaining PGW customers. The OSBA astutely explained this reality in its brief:

The witnesses representing the [OCA], Action Alliance and the [OTS] focused their critiques on the impact of PGW’s proposals on the payment-troubled customers, and paid minimal attention to the implications for PGW’s regular paying customers. . . . PGW is a cashflow regulated utility. Moreover, its ongoing cash position is uncertain. As a cashflow regulated utility in financial difficulties, when some customers do not pay their bills other customers must make up the difference. Thus, the appropriate balance to be struck in this proceeding is between providing reasonable protection to payment troubled ratepayers and establishing just and reasonable rates for the customers who do pay their bills. . . . In any event,

⁷⁷ OCA MB at 29.

under cashflow regulation, the burden of [PGW's] collections problems falls on the paying customers and not on PGW 'shareholders.'"⁷⁸

As OSBA has correctly pointed out, regardless of the Commission view of whether Chapter 56 presently provides the appropriate general "balance" between the rights of individual customers and the financial interests of the affected utilities, it should be clear that "PGW is a special case and should be treated as such when the ALJ and the Commission evaluate the proposed waivers and modifications."⁷⁹ Yet, none of the Opposing Parties recognize that, to the extent that PGW is denied special tools to increase its collections opportunities, the collections shortfall simply is transferred from non-paying customers to the hundreds of thousands of paying customers. These are the same customers who have made it absolutely clear that they do not believe they have any duty or obligation to subsidize non-payers, and emphatically rejected any proposal that they believed had that result. As eloquently summed up by these customers:

PGW is asking those of us who pay our bills to pay even more so others can continue to get service without paying a dime. . . . Currently such a large part of our gas bill goes towards paying for other people's gas that PGW should issue each paying customer a charitable contribution statement . . . The deadbeats should not be entitled to free gas under any circumstances.⁸⁰

Now, we all know the name we call these people who do not pay the tab and let others pick up the bill. They are moochers, they are freeloaders, and on behalf of the residents in the Councilwoman's Sixth District, the gravy trains stops here. . . . What happens when you don't pay your cell bill, your internet, your cable TV, or your electric bill? You get turned off. What happens if you don't pay PGW? Nothing because the hardworking taxpayers in this room pick up the tab.⁸¹

⁷⁸ OSBA MB at 11-12.

⁷⁹ OSBA MB at 12.

⁸⁰ CRRC Tr. 44-45 (Hon. Councilman Brian J. O'Neill).

⁸¹ CRRC Tr. 110 (Patricia Kozlowski, legislative aid testifying on behalf of Hon. Councilwoman Joan Krajewski).

If people don't want to pay, they should shut off their gas. If it's not free for us it shouldn't be free for everybody else.⁸²

Indeed, the OCA in opposing the Company's proposed CRRC, which in large part relied upon the opposition to the concept expressed by citizens and public officials, admonished the Company that "[b]etter uncollectible recovery procedures, . . . can . . . effectively reduce bad debt expense as they do for other gas distribution companies."⁸³ Now that PGW has made proposals in order to do just that, the OCA has reversed its position and again simply said no.⁸⁴

In fact, the OCA suffers from a serious conflict of interest on this matter, as it has had to sacrifice the interests of the vast majority of its paying constituents to advocate for the ability of non-paying customers to continue to get free gas. On this basis alone, the OCA's entire position on the waiver requests should be rejected out of hand. Indeed, the very same customers that OCA relied upon to help defeat the CRRC would be aghast to learn that the OCA has abandoned their interests, is now an enabler for the non-payers, and is fighting for the transfer of the non-payer's charges to the bills of the responsible, paying customers. The positions of these customers, all of whom were quoted in its CRRC brief, are fundamentally inconsistent with OCA's position regarding the waivers:

[C]harging paying customers to subsidize deadbeats who don't care whether they have gas or not. They don't care, why should we? They have their cell phones, they have their cable TV, they pay those bills but they don't pay their gas bills. They don't care that their kids don't have heat.⁸⁵

⁸² CRRC Tr. 194 (Veronica Lumi).

⁸³ OCA CRRC MB at 7-8.

⁸⁴ The opposing parties' arguments are inconsistent in another respect as well. In virtually every instance in which they reflexively oppose the innovations proposed by PGW to enhance its collections opportunities, because they potentially could affect customers' ability to receive natural gas service, they also point to provisions in Chapter 56 which allow PGW to achieve very close to the same result on a case-by-case basis. By pointing out the provisions of Chapter 56 that would permit PGW to take actions with respect to individual customers more or less along the same lines as those proposed in its waiver requests, the parties are implicitly recognizing that Chapter 56 does allow for modifications of its general prescriptions. Left unexplained is why is it appropriate to reverse the winter termination ban under the Chapter 56 rule, for example, but not under PGW's suggested rule, applicable only to upper income customers? Apparently because PGW has requested it.

⁸⁵ CRRC Tr. 85 (Catherine Jackson who appears in OCA CRRC MB at 36-37)..

I would like you gentlemen, Your Honor, go down to Atlantic City and tell me how many Philadelphia people are down there gambling and not paying their gas bills. I would like to know that. They have money to gamble but they don't have money to pay their gas bill. . . . The deadbeats, absolutely shut them off. Because I believe in my heart truthfully, there's a lot of them gambling in Atlantic City. Losing money in Atlantic City. And if they're winning, why aren't they paying their bill?⁸⁶

I pay my bills. I cut out a lot of things. I would like to have lobster and steak. But you have to cut down on it to do your bills.⁸⁷

Get an agreement situation that the folks that aren't paying you can keep. If they don't pay them zap them.⁸⁸

Neither the OCA (nor the Commission) can have it both ways.

Another point overlooked by the opposing parties is that PGW went to great pains to propose modifications in Chapter 56 rules that only affect higher income customers. The best evidence in the record is that only about 41% of PGW's existing customer base has incomes above \$30,000 (for a family of 4 the approximate start of the Income Level 3 category).⁸⁹ Moreover, only approximately 7% of its customers have incomes above \$40,000 (for a family of 4).⁹⁰ These statistics demonstrate two important points: (1) by focusing principally on income Level 3 and 4 customers, PGW has insulated the majority of customers in lower income categories from any adverse affects that may be possible from its proposal; and (2) at the same time, however, it is important to recognize that, if PGW's proposals are limited to just the highest income levels (for example families with incomes of \$40,000 and above), the reach of its proposals would be so limited as to not provide the benefit to PGW's collections and cash working capital that it so desperately needs. Suffice it to say that the Opposing Parties never

⁸⁶ CRRC Tr. 98-99 (Marilyn Chaiken, who appears in OCA CRRC MB at 37).

⁸⁷ CRRC Tr. 177 (Mary Winston, quoted in OCA CRRC MB at 40).

⁸⁸ CRRC Tr. 184 (Rev. Bruce M. Edwards, who appears in OCA CRRC MB at 40-41).

⁸⁹ PGW St. CRRC-5 at 16.

⁹⁰ *Id.*

bothered to make such distinctions – they simply opposed the proposed changes for all income levels, refusing to acknowledge that PGW’s special circumstances as a municipal utility in financial crisis justifies requiring upper income customers to pay for the services they receive. This simply is not a reasonable position.⁹¹

E. PGW is Not Claiming That Chapter 56 is Preventing It From Engaging In Collections, But Revisions Are Needed of Outdated and Unbalanced Rules to Help The Company to Do More Under its Special Circumstances.

As noted in the Introduction, the Opposing Parties operate under two fundamental misconceptions regarding the role of Chapter 56 and PGW’s collections. First, the parties misconstrue PGW’s Petition for Waiver as an indictment of Chapter 56, and demand the evidence that the Chapter’s rules are actually harming PGW’s collections.⁹² The Company is not claiming that, on an overall basis, Chapter 56 has actually harmed its collections efforts, and therefore is not asserting that its provisions need wholesale revision. The Company’s position, supported by the evidence, is that while an update of Chapter 56 from a general industry-wide standpoint may well be appropriate, PGW’s present request is more narrow. The present inadequacy of its cash and liquidity and the insistence by the rating agencies that there must be a material improvement in those areas, make clear that PGW must find a quick and reasonably predictable way to do more than that which present rules allow. Loosening carefully selected rules that are outdated or tilted too far in favor of the non-paying customers is necessary for PGW to achieve the “material” improvement in these areas, as demanded by the rating agencies. PGW merely seeks a modernization of certain rules and a re-balancing, consistent with the changes in PGW’s environment and PGW’s needs.

The second misconception proffered by the Opposing Parties is that Chapter 56 is some sort of panacea that should be afforded the full credit for PGW’s recent improvement in collections to levels nearing its historic performance and, if allowed to continue to work, would

⁹¹ OCA claimed, incorrectly, that PGW “does not know how many of the 133,000 customers who were in arrears on April 1, 2004 were Level 3 and Level 4 customers.” OCA MB at 26. In fact, PGW has made a reasonable projection of that level – of the 133,000 families approximately 54,600 or 41% have income levels above \$30,000 approximately the cut-off for Income Level 3. See, PGW St. 5 at 16, Exh. TEK-5.

⁹² OCA MB at 7-8; OTS MB at 50-53; AA MB at 6-12.

solve all of PGW's problems.⁹³ This assumption cannot withstand scrutiny – and it did not during the hearings in this matter. First, PGW's improvement also coincided with the implementation of its major Collections Initiative, which involved increases in overtime to permit additional collections, new efforts to provide reminder calls to customers who fall behind in their bill after a bill is overdue less than 30 days, the implementation of an electronic information transfer process so that PGW now reports to the credit bureaus the payment status of every customer, filing liens on past due accounts, better coordination of personnel in different departments, more effective communications with customers just as they began to fall behind in payments, and filing collections actions in court against commercial customers, including landlords, among other things.⁹⁴ The pertinent conclusions from these facts: (a) PGW's Collections Initiative played a key role in the recent collections "success;" and (b) the achievement realized – *even if attributed to Chapter 56* – is not good enough to satisfy the rating agencies and prevent a downgrade to junk status.

Finally, the misperception that Chapter 56 is due all the credit for recent collections improvements was thoroughly refuted upon the cross examination of the OTS's Mr. Mick.⁹⁵ Mr. Mick admitted that many factors influence collections levels, and the predominant factors are weather and the level of gas bills.⁹⁶ Accordingly, Mr. Mick could not disagree when PGW suggested that it was unfair to blame Chapter 56 for the dramatic drop-off in PGW's collections levels from 97% in FY 2002 to just about 92% in FY 2004.⁹⁷ Likewise, it would be equally unfair and erroneous to credit the rules for any temporal collections improvement experienced by the Company.

F. PGW's Non-Use of Existing Waiver Options Is Immaterial.

⁹³ See, e.g., OTS St. 2 at 2-8.

⁹⁴ PGW St. CP-1 at 4-5.

⁹⁵ Tr. 721-24.

⁹⁶ Tr. 724.

⁹⁷ Tr. 722-23; PGW CRRC-1 at Exh. JRB 4.

Several parties also assert the unsupportable contention that PGW's waiver request must be denied because the Company has not previously sought a waiver as to individual customers on fact-specific cases.⁹⁸ This argument ignores the obvious. As the OSBA rightly noted, PGW's collections and payment problems are "enormous."⁹⁹ The record evidence shows that the Company has some 250,000 customers who are payment troubled, and had roughly 133,000 customers (now up to 150,000) eligible for termination coming out of this year's winter moratorium.¹⁰⁰ With these numbers, it is unreasonable to suggest that PGW should have been using the case by case waiver mechanisms available under Chapter 56 or the Commission's regulations generally. Even if the Company attempted to use the existing procedures for only those highest income customers who stopped paying their bills this winter, PGW would be facing the potential of filing thousands of waiver requests with the PUC.¹⁰¹

The Commission should also note, though, that just because PGW has not sought an individual waiver, it cannot conclude that the Company has been sleeping on its rights. In fact, the evidence in this matter included a BCS decision on an informal complaint filed by PGW in order to stop an instance of the "name game" and attempt to collect on an arrearage of more than \$7,000.¹⁰² This evidence is instructive on several levels. First, it shows the great effort PGW is exerting to try and collect its bills and put a halt to the illicit practices and gaming of some customers (this complaint is one of several PGW has pursued). The filing of the informal complaint involved significant paper work, expense, and administrative effort. Moreover, the Company has had to file a formal complaint, appealing the inadequate relief it was granted, and will have to defend the formal complaint/appeal filed by the losing customers.

Second, the BCS's decision in this informal complaint reveals the inadequacy of Chapter 56 and the relief available using the parties' case by case approach. In this instance, a customer

⁹⁸ OTS MB at 52-53.

⁹⁹ OSBA MB at 12.

¹⁰⁰ PGW St. CRRC-5 at 4, 16; CRRC Tr. 355, 367; PGW St. CP-1R at 13.

¹⁰¹ Income Level 4 customers constitute 7.2% of customers in arrears. PGW St. CRRC-5 at 16; 7.2% x 150,000 = 10,800.

¹⁰² PGW Cross Exh. CP-3.

who broke several payment arrangements and failed to adhere to CRP obligations on numerous occasions attempted to transfer service to a second adult (her mother) who resided at the same locale. The first consumer's outstanding balance (which the BCS rightly attributed to the second adult/applicant as well) was over \$7,000. BCS's decision was to place the customers back into yet another payment arrangement, designed to pay off the arrearage in 10 years without one cent of upfront down payment toward the \$7,000 plus balance.¹⁰³ Whatever relief the Opposing Parties claim PGW can realize "on paper" under Chapter 56 and its case by case waiver/rules application, this real life example reveals the true help PGW can expect from their recommended approach.

G. PGW's Estimates of Increased Collections and Cost Savings are Reasonable.

The Opposing Parties also attempt to undermine the additional revenues and cost savings that PGW has projected for each of its waivers. The attacks take two forms: (1) the projections are claimed to be "mere estimates" which are insufficient for the purposes of balancing the interests of the Company and its customers;¹⁰⁴ and (2) the Company is criticized for not factoring into the estimates potential costs associated with implementing the waivers.¹⁰⁵ Both points are meritless.

The first attack, mainly proffered by Action Alliance, is essentially a mischaracterization of the Commission's CRRC Order. In that Order, the Commission expressed its discomfort with using what it considered to be estimates of future collections performance to set an automatic adjustment mechanism that had no true-up or credit-to-the-customer element.¹⁰⁶ The Commission did not say that estimates of cost savings or enhanced revenues from the proposed Chapter 56 waivers were not welcome in this proceeding or were somehow insufficient for applying the balancing standard set forth in the June 2nd Order (which Action Alliance ignored in any event). Indeed, to the contrary, the Commission expressly indicated its expectation that

¹⁰³ *Id.*

¹⁰⁴ AA MB at 7.

¹⁰⁵ OTS MB at 51.

¹⁰⁶ CRRC Order at 19.

PGW provide such “estimates” as a material part of its case to justify the waivers.¹⁰⁷ PGW has done just that. If it could not produce estimates it would not be able to present any evidence of the value of its proposed waiver requests.

Turning to the second challenge, the OTS claims that PGW’s projections do not account for potential implementation costs of the waivers.¹⁰⁸ However, such costs are minimal, and cannot be suggested to offset the additional revenue and cost savings which tally in the tens of millions of dollars.¹⁰⁹ In preparing its Petition for Waiver, the Company’s goal was to select those waivers or modifications that would enable it to improve materially its collections in the near term, or in 4-6 months.¹¹⁰ Consequently, PGW made a conscious effort to design Chapter 56 changes that could be implemented with expediency and ease, both in terms of cost, systems changes, and administrative burdens. Accordingly, the changes proposed by PGW will not entail significant implementation costs. No major systems changes are required (indeed, proposals requiring such revisions, such as the OCA’s, were opposed for that very reason), and, with flexible scheduling of employees, the Company does not even anticipate major overtime expenses.

Therefore, the OTS’s assertions lack the support of any evidence in the record, and are in fact contradicted by the same. PGW’s revenues and savings projections easily offset any minimal implementation costs, and should be accepted by the Commission.

H. The Specific Arguments Made by the Opposing Parties in Opposition to PGW’s Waiver Requests are Without Merit.

I. Introduction

¹⁰⁷ July 8 Procedural Order at 4.

¹⁰⁸ OTS MB at 51.

¹⁰⁹ PGW Exh. CP-1 at App. A; PGW MB at 26, 31, 35, 39, 45, 47, 50, 52, 54.

¹¹⁰ PGW MB at 55-56.

In addition to the general comments above, the Opposing Parties unleashed a spew of spurious allegations with respect to PGW's waiver requests. PGW will attempt to respond summarily to as many as possible in the pages below.¹¹¹

2. Specific Waiver Requests.

a. Require full payment of outstanding balance before restoration of service.

In addition to the arguments listed above to which PGW has already responded, OCA also claims that PGW's request is unnecessary because "[t]o the extent that PGW has customers that have repeatedly broken payment arrangements, the current rules already permit PGW to address this problem."¹¹² OCA then goes on to quote the Action Alliance witness who points out that Chapter 56 permits a utility to require full payment of the outstanding balance of an arrearage if a customer has broken two or more payment agreements or has been terminated on the basis of a BCS decision.¹¹³ But the right to demand full payment when two or more payment agreements have been broken is little solace to PGW; the rule literally doubles the loss that the Company and its customers must bear compared to the Company's proposal. Thus, OCA's contention is devoid of actual substantive value to PGW.

OCA also contends that PGW's calculation of the estimated savings from this proposed change is based on "faulty assumptions," because it assumes that 90% of the customers terminated will reconnect service despite the fact that they will be requested to remit the full

¹¹¹ Both OCA and Action Alliance criticize PGW for not responding to a variety of interrogatories propounded by OCA, claiming that PGW had not satisfied the evidentiary requirements that these parties insist PGW had to satisfy. OCA MB at 7, n 1; Action Alliance MB at 11. But the suggestions that PGW was unable to provide needed information is not accurate. OCA demanded a huge amount of very detailed information with extremely limited relevance. Moreover, as PGW witness Gyory indicated, a large portion of the requested information was available but needed to be extracted from other data bases or could be extracted if PGW's BCCS system was queried. Since providing these data would take extensive computer time and programming effort. Therefore, PGW offered to provide the data if OCA (or other parties) provided an order of priority of the request. Tr. 673. No such priority list was ever forthcoming. Therefore, the suggestion that PGW was "unable" to provide the requested data is simply not accurate.

¹¹² OCA MB at 24.

¹¹³ *Id.*

amount of their arrearage.¹¹⁴ But PGW's 90% assumption is based on historic experience with all customers and in all circumstances,¹¹⁵ and is thus the most reasonable and best available evidence. Even if a 50% factor was used, PGW's proposed revision would still produce substantial savings.

In addition, OCA challenges the overall calculation of value from this proposal, claiming that it does not take into account the fact that many customers are already required to make upfront payments. However, PGW's estimate of the total value recognized that, under current rules, while upfront payments are theoretically required, this provision is frequently not enforced. For example, in the informal complaint presented on the record in this proceeding, a customer who was applying for service and who was determined to be responsible for a \$7,000 prior arrearage was required to do nothing more than pay \$100 a month on that arrearage with no upfront payment.¹¹⁶ Accordingly, PGW's assumption was reasonable, and if anything merely overstates to some extent the value of its proposal. As with all of its specific calculations, the difference in opinion as to the exact value of the proposed waiver does nothing to detract from its reasonableness as a way of making a positive contribution to PGW's collections and cash working capital.

b. Winter termination rules

In addition to the arguments already addressed, the OCA claims that PGW's proposal to forego the winter termination ban for Level 3 and 4 customers is invalid because "PGW does not know how many [customers] are Level 3 and 4 customers."¹¹⁷ This is simply untrue. PGW witness Gyory clearly indicated that the Company had made an estimate of income break-down based on a survey of the 133,000 customers subject to termination at April 1.¹¹⁸ Some 54,000 of those customers had incomes of over \$30,000 a year, just around the standard for Income Level 3

¹¹⁴ OCA MB at 24-25.

¹¹⁵ Tr. 663.

¹¹⁶ PGW Cross Exh. CP-3.

¹¹⁷ OCA MB at 26.

¹¹⁸ Tr. 667-670.

customers with 4 person families.¹¹⁹ What PGW may not know definitively, unless it has accumulated data as part of entering into a payment arrangement, is the specific income category into which the customer falls. OCA also claims that “PGW really has no way of determining whether a customer who is delinquent during the winter is a Level 3 or 4 customer or is a non CRP Level 1 or 2 customer...,” and on this basis, claims that PGW’s request “could create a perverse incentive for customers to avoid contact with PGW...in order to avoid disclosure of income information and exposing themselves to a possible winter termination.”¹²⁰ First, the OCA should have acknowledged that PGW witness Gyory specifically indicated that, if the Company did not have information which would positively identify a customer as an income Level 3 or 4 customer, it will not pursue a termination.¹²¹ For this reason alone, OCA’s concerns are completely unwarranted. But even if PGW had not made this concession, the OCA’s argument is extraordinary. It amounts to a claim that because a customer might avoid contact with PGW personnel to avoid giving them income information, this should be a reason to permit a customer to continue to shirk his/her responsibilities to pay their utility charges. If a customer engages in such behavior, that should eliminate any question that the customer is failing to act in good faith, therefore justifying termination in any event. OCA’s cavalier attitude about PGW collections and its willingness to foist the obligation to carry such customers on the remaining well-paying rate payers is unreasonable.

Finally, OCA and the other opposing parties chastise PGW for suggesting a winter termination ban modification even though it had not utilized the existing winter termination waiver regulations.¹²² As explained above, these arguments are disingenuous because they intentionally ignore the enormity of the PGW problem. PGW would have had to file thousands

¹¹⁹ CRRC Proceeding, PGW St. CRRC-5 at 16; Exh. TEK-5.

¹²⁰ OCA MB at 28.

¹²¹ Tr. at 667.

¹²² *E.g.*, Action Alliance MB at 17-20.

of individual petitions in the space of 4 months in order to attack the problem utilizing the existing winter termination waiver rules.¹²³

c. Deposit requirements

Except for the following, the Opposing Parties merely repeat the arguments that they previously raised regarding requiring a deposit for all new customers.

OTS claims that there is no evidence supporting PGW's position that existing Chapter 56 deposit provisions are not adequate.¹²⁴ In fact, PGW submitted data showing that over one-half of its entire customer base are payment troubled and a large number of customer (over 25%) fail to pay or fail to pay on time just months after they start service.¹²⁵ Just for this year, these new non-payers represent \$10 million of lost cash working capital and potential total loss.¹²⁶ If the PGW deposit proposal had already been in place, PGW would have been able to mitigate over \$4.5 million of this loss, something it simply cannot do under existing Chapter 56 regulations.¹²⁷ OTS simply did not look hard enough.¹²⁸

On the other hand, OCA's entire argument in opposition to PGW's deposit proposal (joined in by Action Alliance) is based upon an incorrect assumption: that PGW is seeking to protect itself solely against non-payment (i.e., a failure to pay which leads to termination).¹²⁹ In

¹²³ PGW MB at 31-21. Action Alliance's suggestion (AA MB at 20) that PGW could bring a few "symbolic" cases obviously would be ineffective. Examples only work if there is some additional cost of being singled out or if the non-payers think that they may be subject to the same action. If there is no special penalty for being subject to a waiver, or if the customers know that there is no way for the Company to pursue all of the non-payers they, will all simply wait and see whether PGW gets to them or not.

¹²⁴ OTS MB at 53.

¹²⁵ PGW MB at 28, 34.

¹²⁶ PGW St. CP-1R, Exh. CP/RG-4.

¹²⁷ PGW MB at 34.

¹²⁸ Contrary to the OCA and OTS argument (OCA MB at 33; OTS MB at 54), the same data supports PGW's request that absent a PUC determination of extreme circumstances, the customer should be required to pay the deposit in a lump sum. Without such requirement, PGW's protection against non-payment or slow payment is drastically reduced.

¹²⁹ OCA MB at 30.

fact, PGW, as a cash flow company, must protect itself against both types of abuses – non-payment and slow payment – and, if it receives authority to request deposits from all customers, plans to apply a deposit to an account when it is more than 61 days overdue. This one change would be a huge benefit in reducing the cash working capital drain that slow-paying customers impose on the system.¹³⁰ Hence, the OCA argument about alleged overstatement of the value of the deposit requirement (suggesting that PGW would only be able to take the deposit if the customer is terminated)¹³¹ is simply wrong.

Also, OCA reiterates its argument that, if the deposit requirement proposal is granted, PGW should be required to give back (in cash) the entire deposit after one year.¹³² PGW showed why its proposal to credit the customer’s account is essential in order to avoid further exacerbating its cash flow shortfall.¹³³ OCA’s new argument in this regard – that PGW must give deposits back in cash because failure to do so would violate 52 Pa. Code § 56.53(4), and that PGW has not requested a waiver of this section – is silly. PGW made clear that its request to the PUC is to authorize the actions and practices set forth in its Petition and to waive all sections of Chapter 56, the Public Utility Code or other PUC rules that are inconsistent with those authorized actions and practices.¹³⁴ The PUC is not bound in the process by contrary provisions of its own regulations.¹³⁵

¹³⁰ This approach could also serve to help customers who fall into temporary difficulties because they could use the deposit as a means of paying their bills during such times. If the customer stayed current after the deposit was used in this way PGW would not be able to request another deposit unless the customer again was delinquent in 2 successive months or 3 times in a year. 52 Pa. Code § 56.41.

¹³¹ OCA MB at 31.

¹³² OCA MB at 32.

¹³³ PGW MB at 36, n. 132.

¹³⁴ *Id.* at 81-82.

¹³⁵ In addition, PUC rules assume that pleadings are deemed amended to conform to the evidence presented “when it appears that the presentation of the merits of the proceedings will be served thereby without prejudicing the public interest or the rights of a participant.” 52 Pa. Code § 5.92(a). In every instance in which this argument has been made that PGW didn’t cite every single section of Chapter 56 that might be affected by the particular waiver request, the opposing parties were fully aware of what PGW was requesting and had the opportunity to fully respond to the proposal. Therefore, the OCA claim is not legally supportable.

- d. Require all applicants to establish positive identification and require applicants who are identified as previously residing at that location be held responsible for any previous arrearage during the time they resided there.

On this issue, OTS continues to oppose PGW's position claiming that "legal obligations are best suited for judicial interpretation."¹³⁶ It makes this argument despite the fact that the evidence in the record shows that the Bureau of Consumer Services has interpreted the present regulations as permitting it to apply past arrearages to customers when it is clear from the facts that the new applicant benefited from the past service giving rise to the arrearage.¹³⁷

Moreover PGW's proposal clearly indicated that the Company did not intend to act as "judge and jury," but that it would apply the arrearage to an applicant if it had specific evidence that the applicant had benefited from the service based on widely available and well-respected credit data bases.¹³⁸ Further, an applicant could file a complaint with the PUC challenging the accuracy of the data.¹³⁹ In fact the only real change effectuated by this proposal is that the presumption would indeed be altered so that customers who are attempting to abuse the system and use the "name game" to avoid their obligations would hopefully be identified and stopped. This proposal is not unfair.

OCA and Action Alliance on the other hand claim that PGW's suggestion is illegal because "utility service is contractual in nature."¹⁴⁰ These arguments fail to grasp basic concepts of public utility law. Indeed, to the extent that utility service is "contractual," the "contract" comprises the tariff on file with the PUC as well as the regulations promulgated by the PUC. It is well established that this tariff can change at any time (without specific authorization of one party to the "contract" – the customer), and can do things that no contract would ever permit, such as charging the customers for underbillings or errors in billings even after the customer has

¹³⁶ OTS MB at 54.

¹³⁷ See PGW MB at 38; PGW Cross Exh. CP-3.

¹³⁸ *Id.*

¹³⁹ PGW MB at 42-43.

¹⁴⁰ OCA MB at 34; Action Alliance MB at 25.

taken and used the service.¹⁴¹ In short, the specific terms of the “contract” for utility service have always been established by the PUC in the utility’s tariff. The Commission is clearly within its rights to establish that, under proper circumstances, a customer attempting to defraud PGW and its other customers by seeking to apply for service without acknowledging that he/she benefited from the service at that location in the past should be made responsible for those charges.

Moreover, none of the Opposing Parties appeared to be aware that a well established principle of contract law is that a party may recover from another, regardless of whether there is formal privity of contract, if one party has received a benefit from another and would be unjustly enriched if formal contract rules were elevated over fairness.¹⁴² This is exactly what the Opposing Parties are attempting to do: permit customers who have benefited from PGW service to shirk their obligation under cover of “contract.” Since PGW has clearly stated its agreement that customers may file complaints when there is an allegation that the applicant should not be held liable for a past arrearage, customer rights are adequately preserved. The contrary arguments of the Opposing Parties should be rejected. An order permitting PGW to include provisions in its tariff that would authorize it to apply arrearages to new applicants when the evidence shows that the applicant benefited from the service giving rise to the arrearage would be legal and reasonable.

Finally, Action Alliance chastises PGW’s estimate of the value of this revision claiming that PGW has no idea how many customers are actually using the “name game” to defraud PGW and its remaining customers.¹⁴³ But PGW never claimed it knew with certainty the extent of name game fraud. Hard estimates of this type of activity would only be possible with detailed investigation.¹⁴⁴ PGW submits that if its proposed rule helps to make any dent in this payment

¹⁴¹ See, *Philadelphia Suburban Water Co. v. Pa. PUC*, 808 A.2d 1044 (2002) and cases cited therein (rates, terms and conditions in approved tariff are the only lawful rates, terms and conditions); *Bell Telephone Co. of Pa. v. Pa PUC*, 417 A.2d 827 (1980) (contracts fixing rates are superceded by the tarified rate in effect at the time the service is delivered).

¹⁴² PGW MB at 41-42.

¹⁴³ AA MB at 29.

¹⁴⁴ PGW MB at 39.

avoidance activity it is appropriate to make the change. PGW would be willing to report to the PUC on the results of this and all the other proposed modifications on a periodic basis.

e. Payment Arrangements

The parties vehemently opposed PGW's proposal to limit the circumstances in which a customer could obtain more than one payment arrangement. PGW has proposed that absent the showing of extraordinary circumstances only a change in income that places a customer in a new income category could authorize an additional payment arrangement.¹⁴⁵ The Opposing Parties claim, however, that a customer could be harmed if he or she is not able to obtain an additional payment arrangement for changed circumstances other than an income level change. The OCA claims that PGW's proposal "fails to account for any unanticipated circumstances that can arise such as a health care crisis requiring significant medical expenditures or the need to bring an additional member into the household."¹⁴⁶

But left unsaid by any of the Opposing Parties is the stark fact that only 9% of the payment arrangements entered into by PGW are completely honored by their customers.¹⁴⁷ Therefore, successive payment arrangements are not occurring because of medical emergencies or "the need to bring a family member into the household." To a large degree, they are being entered into because customers are not honoring their obligations to pay for the service they receive. In this case, these customers are categorically refusing to honor their obligations time after time, even when PGW is giving them successive opportunities. Under current rules, PGW must acquiesce to such a subsidy system far more times than is prudent. This is an intolerable situation for a company that is on the brink of financial disaster. Limiting payment arrangements in a way that PGW has suggested is the fairest balancing of the Company's need to enforce personal responsibility while allowing flexibility in circumstances that most directly affect a customer's ability to pay – an income drop. Again, except for this one modification PGW's proposal is very similar to the existing *Frayne* rules, and therefore should not be objectionable in

¹⁴⁵ *Id.* at 43-44.

¹⁴⁶ OCA MB at 38.

¹⁴⁷ PGW MB at 45.

view of PGW's special circumstances.¹⁴⁸ Moreover, the Company has agreed that customers could file complaints with the PUC and, in extraordinary circumstances, obtain more than one payment arrangement.¹⁴⁹

f. Friday Terminations.

The OCA has suggested that PGW could be permitted to engage in Friday terminations if "PGW can demonstrate that customers will have access to the full range of services that are necessary to appropriately respond to the loss of natural gas service."¹⁵⁰ In fact, PGW has demonstrated this in its Main Brief. It showed that from the time a customer receives a bill containing an overdue notice to the time that his or her service is terminated, under present rules the customer has at least 50 – 52 days to make such arrangements.¹⁵¹ There is no reasonable basis on which to conclude that a customer will not have complete access to all of the termination response channels that he or she wishes to pursue in that time. If the customer simply waits until the day after the termination to begin to respond the customer should bear the responsibility and the consequences, to the extent there are any.

g. Elimination of 48 Hour Notice Requirement.

For the same reasons, the Opposing Parties' arguments concerning PGW's suggested elimination of the 48 hour notice requirement should also be denied. All of the Opposing Parties contend that the 48 hour notice requirement is absolutely necessary to make sure that a customer has adequate time to respond to a termination.¹⁵² They have all apparently overlooked the fact that customers have at least five - six weeks to respond to an overdue bill; all customers are fully capable of taking all necessary actions during that time.¹⁵³

¹⁴⁸ *Id.* at 45.

¹⁴⁹ *Id.* at 45-46.

¹⁵⁰ OCA MB at 41.

¹⁵¹ PGW MB at 48.

¹⁵² OCA MB at 41-42; Action Alliance MB at 34.

¹⁵³ PGW MB at 50.

Significantly, PGW is not proposing that it abandon any attempt to make contact with the customer prior to termination – it will still do that on the day the termination is scheduled. However, PGW’s proposal is that, failing to make personal contact, it would go ahead with the termination rather than, as under the present rules, merely being able to post a notice and having to wait another 48 hours before termination could occur.

h. Time Limits for Acting on Shut-Off Notices

The OCA has actually supported PGW’s request that the time limit for acting on shut-off notices, currently 30 days pursuant to a BCS administrative guideline, be extended to 60 days so long as the Company promises that only the termination notice amount will be required to be paid in order to avoid termination.¹⁵⁴ As OCA pointed out, Mr. Gyory stated under oath that PGW would adhere to such a rule.¹⁵⁵ Therefore, this modification to the administrative rule should be granted.

Action Alliance, however, opposes this request and makes the incredible claim that forcing PGW to have to restart the termination process if it is not completed within 30 days, thus requiring the Company to go back and re-contact the customer with a 10 day notice, a 72 hour phone call and (today) a 48 hour notice, is a good thing because it “would lead PGW to have more contact with payment troubled customers presumably garnering more money for the Company.”¹⁵⁶ This argument conveniently overlooks the fact that the restart also results in PGW having to provide several weeks of additional natural gas services to such customers. PGW estimated that cutting off this free gas service opportunity could save the Company as much as \$20 million.¹⁵⁷ Under Action Alliance’s logic, PGW should never terminate any customers – it should just send them multiple termination notices! This argument is obviously meritless.

i. Expansion of Time Limitation For Restoration.

¹⁵⁴ OCA MB at 45.

¹⁵⁵ PGW MB at 53.

¹⁵⁶ AA MB at 35.

¹⁵⁷ PGW Exh. CP-1, VS p. 14.

OCA agrees that the one day requirement is too stringent for “dig ups” (where PGW’s only ability to terminate and restore service is by physically digging up the line and disconnecting the pipe) and supports permitting PGW a longer period in which to restore service in such instances.¹⁵⁸ OCA does not support any other extensions. OTS, however, based on BCS witness Mumford’s testimony, opposes any proposed extension of the current restoration time limit even for “dig ups”; the OTS claims without the slightest bit of evidence other than its own view of prudent practice, that PGW should not need more time to restore service to a “dig up” customer because, in Mr. Mumford’s opinion, PGW should be installing a curb valve when it terminates service.¹⁵⁹ But as Mr. Gyory explained, restoring a dig up customer (and installing a curb valve) is 4 times more expensive than a termination without installing a curb valve.¹⁶⁰ The reason is that it is 4 times more time consuming than terminating without installing a curb valve. Thus, following OTS’s suggestion would result in increased costs and massive delays in PGW’s ability to terminate customers, allowing all those customers to continue to receive natural gas service for additional days or weeks. Regularly installing a curb valve when termination occurs would also result in some number of installations at locations where the customer never restores service, or does not for some time.¹⁶¹ Since BCS has never actually operated a natural gas distribution utility, it is not surprising that it would be ignorant of these facts; what is surprising is that it would be willing to call PGW “imprudent” with so little information and actual experience. The BCS/OTS opposition to the PGW’s restoration timeline extension proposal is unfounded and should be rejected.

III. THE MEANS TESTED SCD IS FULLY SUPPORTED AND SHOULD BE APPROVED.

The sole opponent of PGW’s proposed means tested SCD, the OTS, offered little in its Main Brief that PGW has not already refuted in terms of the cost, workings and appropriateness of the proposal. The main thrust of the OTS argument is its unconvincing attempt to raise the

¹⁵⁸ OCA MB at 46.

¹⁵⁹ OTS MB at 57-58.

¹⁶⁰ PGW St. 1R at 28 (\$500 verses \$2,500).

¹⁶¹ Historically, 10% of PGW customers do not restore service after termination. PGW MB at 26.

bogey-man of “precedent,” and the accompanying threat that if the Commission approves this means tested SCD, it will be required to approve the same type of discount for similarly needy senior citizens in PECO, NFG, UGI and Equitable’s service territories.¹⁶² OTS even offers the ominous prediction that any means tested SCD approved by the Commission “will one day apply to all other senior citizens . . . in the Commonwealth.”¹⁶³ Nothing could be more erroneous.

The OTS’s precedent specter can be summarily dismissed for one simple – and, frankly, obvious – reason: Section 2212(r)(1), which is the only express authority for the PUC’s approval of an SCD, applies solely to city natural gas distribution operations.¹⁶⁴ The term “city natural gas distribution operation” is defined in Section 102 of the Code. PECO is not such an operation, nor is UGI, nor is NFG, nor is Equitable. Indeed, there is but one city natural gas distribution operation in Pennsylvania: PGW. Thus, OTS could not be more incorrect when it asserts that the issue before the Commission requires it to “make policy judgments as to what it believes is in the public interest for all the senior citizens of this Commonwealth.”¹⁶⁵ This is simply not true. In approving the means tested SCD, the Commission will be affecting only the senior citizens of Philadelphia, and will be echoing the policy conclusions reached by the elected representatives of PGW’s customers as to the public interest regarding those seniors.

OTS also goes to great pains to note what it perceives as an intolerable inconsistency between PGW’s stance on its Chapter 56 waiver request, where it looks to the Commission definition of low income (150% Federal Poverty or less) as evidence of who – in the general body of customers – should be able to pay, and the means tested SCD, where senior citizens with incomes above that level would be eligible for the discount.¹⁶⁶ However, this criticism misses the mark.

¹⁶² OTS MB at 19.

¹⁶³ *Id.* at 20.

¹⁶⁴ 66 Pa. C.S. § 2212(r)(1).

¹⁶⁵ OTS MB at 20.

¹⁶⁶ *Id.* at 8-11.

PGW frankly acknowledges that it has proposed different treatment for the general population of able-bodied, working-age customers and for the City's senior citizens. However, this "inconsistency" in the treatment of these groups for the purpose of establishing a level of federal poverty at which assistance or a discount will be provided is not at all arbitrary.¹⁶⁷ Rather, the difference is the product of a reasoned policy judgment to afford some additional assistance to senior citizens who, while having incomes that exceed 150% FPL, are still worthy of financial assistance. This judgment is supported by substantial evidence in the record showing that such senior citizens are more likely to be on fixed incomes, ill or infirm, and suffering from a disability.¹⁶⁸ The Commission clearly has the authority to approve an SCD under Section 2212(r)(1).¹⁶⁹ With CRP available at 150% FPL, there would be little benefit from approving such programs if they were to be strictly limited to the same income eligibility level. Indeed, advocating a means tested SCD at 150% FPL would be the same as opposing such a program in its entirety.

Ultimately, this is policy decision – PGW makes no bones about it. OTS includes in its brief numerous references to politics and political correctness,¹⁷⁰ but the accusation is a point without significance. There is nothing wrong or illicit about making a policy decision to have the general population support a smaller segment of the whole – when the representatives of the general body of ratepayers fully support the concept. Moreover, support for a subset of customers is not unprecedented – all economic development rates work in this way. OTS advocates a different policy approach: all families, whether senior citizen or not, should be treated the same.¹⁷¹ That is its position – clearly advanced sincerely and in good faith – and that

¹⁶⁷ Notably, the OTS suffers from its own inconsistency. While seemingly accepting the notion that customers with incomes exceeding 150% of Federal Poverty, by definition, have the ability to pay, OTS nonetheless opposes all of the Company's proposed waivers designed to make those who exceed that income level actually pay for the gas they use.

¹⁶⁸ PGW MB at 63.

¹⁶⁹ PGW presumes that the OTS has conceded this point, as it has not reiterated its misguided Section 1304 argument in its Main Brief. *See* OTS St. 1 at 10-11; PGW MB at 59-60.

¹⁷⁰ OTS MB at 8-11

¹⁷¹ *Id.* at 11.

is appropriate. But, the elected representatives of PGW's customers, the customers who will be paying for the discount (a minor amount on average per customer annually), have reached a different conclusion. That is ample reason for the Commission to adopt the same conclusion as its own policy decision.

Presumably, given its position here the OTS would oppose the new federal prescription drug benefit, PACE and PACENET, assistance on property taxes and rent under the Pennsylvania Senior Citizen Property Tax Assistance Act, and the discounts for seniors on everything from bus fares to motor vehicle registration and insurance to dog licenses.¹⁷² Nonetheless, the policy judgments behind those senior-oriented discounts and benefits are not wrong or unlawful, and they in fact bolster the similar judgment behind the proposed means tested SCD.

Even if the claim of "politics" is true, this means tested SCD proposal represents the rarest of feats in politics: it is universally supported or not opposed, except for the OTS. The City, the elected representatives of PGW's customers, the Company, the OCA, the senior advocacy groups, the Small Business Advocate, and the industrial and commercial customers¹⁷³ have all gotten behind this proposal as being in the public interest, and the Commission should do the same by approving it.

The remaining points offered by the OTS have virtually all been fully addressed and refuted in PGW's Main Brief.¹⁷⁴ As a summary response, PGW argues as follows:

- The incremental additional cost of the means tested SCD will not impact the Company's cash flow or financial condition. PGW will recover this subsidy from remaining customers in its Universal Service Charge. The only effect this "wash" transaction could have on PGW's cash flow or earnings is if there was a material effect on the Company's cash receipts or uncollectible expense. There is no evidence to conclude that there will be any such effect.¹⁷⁵ Even if there was a

¹⁷² P-00032061, PGW St. 1 at 10-11; PGW St. CP-2 at 5.

¹⁷³ PICGUG participated in the SCD proceeding before ALJ Turner and did not oppose the Stipulation and Settlement establishing the means tested SCD.

¹⁷⁴ PGW MB at 56-63.

¹⁷⁵ PGW St. CP-2 at 10-11; Tr. 641.

demonstrated difference in the collections rates for two groups; i.e. seniors and all other firm customers, the difference would be small, considering that the average annual incremental cost of the means tested program is under \$400,000 and the total annual average cost of the means tested program is only \$3.4 million through 2020.¹⁷⁶

- The FY 2005 cost for the means tested SCD is not \$1.2 million.¹⁷⁷ OTS apparently overlooked Ms. Coltro's explanation of this figure during her cross examination: the 2005 figure on PGW Exh. CP/CC-2 includes the first three years of the discount.¹⁷⁸ When the figure is broken down to account for the multiple years and adjusted for increased gas costs, the annual incremental increase in cost is exactly what PGW has claimed: approximately \$365,000.¹⁷⁹
- As anticipated, the OTS emphasizes the \$60 million cost of the means tested program over an 18 year period.¹⁸⁰ However, as PGW convincingly explained in its Main Brief, this figure is a red herring.¹⁸¹ The more compelling fact is that, using an average annual cost of \$3.4 million – virtually the same figure as that offered by OTS¹⁸² – the average annual additional cost to be borne by customers would be a mere \$1.88/year for non-heating customers and \$5.81/year for heating customers.¹⁸³ No party can reasonably suggest that such costs are too onerous for customers or that they outweigh the strong policy consensus on this issue.
- PGW's enrollment projections have taken into account the baby boomers. Despite Ms. Coltro's clear testimony that the 1,309 annual enrollment average reflected the impact of the baby boomers,¹⁸⁴ OTS persists in its claim that the

¹⁷⁶ For example, if there was evidence that seniors paid on average 90% of their bills, compared to the Company-wide average of 92%, the difference for the Company would be just 2% of \$3.4 million or \$60,000.

¹⁷⁷ OTS MB at 13, 18.

¹⁷⁸ Tr. 642-43. The figures, taken from a study by Dr. H. Gil Peach conducted for the Restructuring Proceeding (see PGW Exh. SCD/CC-4), covered the period of 2002-2020. On PGW Exh. CP/CC-2, the cost difference is displayed beginning in 2005, with that year's figure incorporating 2002-04's costs also. Tr. 642-43.

¹⁷⁹ PGW MB 58.

¹⁸⁰ OTS MB at 13-14, 18-19.

¹⁸¹ PGW MB at 61.

¹⁸² OTS St.1 at 21, Exh. 1, Schedule 1. OTS's cost was slightly more, but only accounted for 16 years while the underlying data it utilized was based on 18 years of cost incursion. Tr. 642-43.

¹⁸³ Tr. 611; PGW MB at 61.

¹⁸⁴ Tr. 611-12, 645-51.

aging boomers will dramatically change the participation levels.¹⁸⁵ PGW's projections were based on a study of its SCD conducted by Dr. H. Gil Peach for the Restructuring Proceeding.¹⁸⁶ Dr. Peach, an expert with considerable experience in this area, considered all of the demographic phenomena that could impact PGW's senior citizen population, expressly including the baby boomers.¹⁸⁷ Contrary to OTS's assertions, Dr. Peach concluded: "In spite of the boomer bulge, the general aging of the population, the shrinking of the City, and globalization, Philadelphia will show stability in this area [65+ population] until at least 2020."¹⁸⁸

- Finally, OTS draws a comparison to programs like Medicare (and attributes it wrongly to PGW), where those paying for the benefit today will be the recipients tomorrow, and then strikes down the comparison based upon the fact that not all customers who pay for the means tested discount will be eligible to receive it when they turn 65 (i.e., they will have incomes in excess of 250% FPL).¹⁸⁹ Beyond the fact that PGW has not made this argument, OTS's assertion is, again, inapposite. The policy judgment behind the means tested SCD is not contingent upon the notion that all who pay for the discount today will someday benefit from it – nor need it be. The federal and state governments approve many programs, such as Medicaid, public assistance, CHIP health insurance program, LIHEAP, etc.¹⁹⁰ that are paid for by the general public, but aid a specific segment of the public of which many tax paying citizens will never be members. Such policy judgments are common.

Given the limited and unique application of such a means tested SCD to PGW, the lack of any material impact on the Company's cash flow collections, or uncollectibles the *de minimis* average annual additional cost to the general customers, the demonstrated need of the senior citizen population in Philadelphia, and the nearly universal support of or non-opposition to the program, the Commission should approve the means tested SCD.

¹⁸⁵ OTS MB at 14-16.

¹⁸⁶ Tr. 645-51. The study may be found at PGW St. CP-2, Appendix A, PGW Exh. SCD/CC-4.

¹⁸⁷ PGW St. CP-2, App. A, Exh. SCD/CC-4 at 6-12.

¹⁸⁸ *Id.* at 12 (emphasis added). The report, using 1990 and 2000 census data and accounting for the baby boomers, shows the senior citizen (65 and over) population of the City as a percentage of the total population ranging between 13.6%-15.2% between 2005 and 2020. *Id.*

¹⁸⁹ OTS MB at 11.

¹⁹⁰ See, e.g., www.ins.state.pa.us. "The Children's Health Insurance Program is Pennsylvania's program to provide quality health insurance for children of working families who otherwise cannot afford it."

IV. UNIVERSAL SERVICE PROGRAMS

The PUC directed that part of this proceeding should involve an investigation of the level of costs, cost effectiveness and management of PGW's universal service programs. In its Main Brief, the Company showed that the record supports only one conclusion concerning this aspect of the Commission's investigation: that the Company's universal service programs are effective, well managed and comparable from a cost perspective to those of other natural gas distribution companies.¹⁹¹ Both the Company and OTS demonstrated that the disparity between the costs and beneficiaries of PGW's programs and those of other gas utilities (noted in the Commission's June 2nd Order) is entirely consistent with this conclusion.¹⁹² No party (other than the OSBA) disputes these conclusions.

The Company also established that the design and cost allocation of its universal service programs were thoroughly reviewed and evaluated by the Commission and various parties in PGW's Restructuring Proceeding before being approved by the Commission.¹⁹³ Noting that the Company's programs were approved as "consistent with the Commission's universal service guidelines and standards," Action Alliance sees no need for further review of these programs at this time.¹⁹⁴ Similarly, the OCA believes a comprehensive evaluation of PGW's CRP is not appropriate in this proceeding, and the OCA looks forward to addressing the issues after the Company conducts its full review of the CRP and proposes program design changes.¹⁹⁵

Although the OSBA supports the Company's commitment in this regard,¹⁹⁶ the OSBA requests that the PUC approve one of the two OSBA program design and cost allocation proposals "on an interim basis" in the meantime. Both the Company and the OCA demonstrated

¹⁹¹ PGW MB at 63-70. The Company's universal service programs are the Customer Responsibility Program ("CRP") and the Conservation Works Program ("CWP").

¹⁹² *Id.*, at 64-67; OTS MB at 36-40.

¹⁹³ The OCA noted certain program design changes to increase CRP participants' payments which were approved in the Restructuring Proceeding. OCA MB at 47.

¹⁹⁴ AA MB at 5-6.

¹⁹⁵ OCA MB at 50; *see*, PGW MB at 67, n. 240.

¹⁹⁶ OSBA MB at 8.

that the OSBA's proposals should be rejected as inconsistent with the Gas Choice Act and the Commission's regulations and policies, and contrary to the Commission's determinations in the Company's Restructuring Proceeding.¹⁹⁷

Although the OSBA acknowledged that the redesign of the Company's CRP is not before the Commission in this proceeding, it casts its proposals as alternatives to address the "excessively high" level of the Company's universal service costs to bring them within the scope of this proceeding.¹⁹⁸ Most significantly, the OSBA cited no evidence for the basis of its proposals – the assertion that the Company's universal service costs are "excessively high" – because there is none. No other party has made this assertion, and the Company and the OTS have demonstrated that these costs are, in fact, reasonable in light of the Company's unique demographics.¹⁹⁹ In addition, the OSBA acknowledged that the level of rates charged is a "program design issue,"²⁰⁰ yet the OSBA proposes to cap the level of rates charged by capping the number of CRP customers.²⁰¹ The Commission should reject the OSBA's attempt to broaden the Commission's investigation and relitigate issues already decided in the Company's Restructuring Proceeding.²⁰² A cap would deny low-income customers important energy assistance that they need, and likely raise costs to all customers in the long run.²⁰³

¹⁹⁷ PGW MB at 68-69; OCA MB at 48-50.

¹⁹⁸ OSBA MB at 8-11.

¹⁹⁹ PGW MB at 63-66; OTS MB at 36-40.

²⁰⁰ OSBA MB at 7. The CRP participation levels and potential cost impacts referenced by the OSBA (MB at 8) are also program design issues.

²⁰¹ *Id.* at 9.

²⁰² The OSBA's reference to a Commission decision involving expansion of NFGD's LIRA program (OSBA MB at 10, n.4) to support its "residential customer only" cost allocation proposal ignores the fact that the OSBA argued its residential-only position in PGW's Restructuring Proceeding in its Main Brief (pp. 7-21), its Reply Brief (pp. 7-21) and its Exceptions (pp.22-29) – and both the ALJ (R.D. at 95) and the Commission (Opinion and Order at 62-64) heard and rejected its argument.

²⁰³ PGW MB at 69.

V. PGW COLLECTIONS

In its Main Brief, the Company refuted the arguments (made in the CRRC proceeding) that PGW's current collections process was "flawed," and showed that the Company's current collections program is adequate and reasonable.²⁰⁴ No party argues otherwise, and several parties agree. Based on the improvement in PGW's collections shown on this record, the Philadelphia Public Officials assert that the Commission should conclude that the Company's current collection processes and practices "represent effective improvements over past practices that have resulted in greater efficiencies."²⁰⁵ The OTS concludes that the Company's "collection practices are properly managed, cost effective and adequate as currently administered" and have produced "a significant improvement" in the Company's overall collection rate.²⁰⁶ Even the OCA agrees that "PGW is currently taking the necessary steps to increase its collections rate."²⁰⁷ Therefore, the Commission should find that PGW's collection's practices are adequate and reasonable.

VI. COMPLIANCE TARIFF ISSUES

1. Residential Field Charge

The OCA and Action Alliance continue to claim that PGW's \$10 Residential Field Charge should be denied because the Company has not proven that the charge was "cost justified." If PGW was proposing a charge to cover some new activity or one that was not previously included in rates that would be a relevant inquiry.

But these arguments ignore the fact that PGW's 2002 Base Rate Case²⁰⁸ included \$600,000 in its total revenue requirement for the Residential Field Charge and the PUC approved the Company's overall rate structure including the \$600,000 Residential Field Charge revenue

²⁰⁴ *Id.* at 70-76. Despite the significant increase in natural gas costs this year, the Company has improved its collection rate by 4% to near historical averages. *Id.* at 75.

²⁰⁵ Public Officials MB at 8.

²⁰⁶ OTS MB at 30. The record support for the OTS conclusion is set forth at pages 30-32 of its Main Brief.

²⁰⁷ OCA MB at 16.

²⁰⁸ *Pa. P.U.C. v. PGW*, R-00017034.

requirement. In other words, if the Company had not included the \$600,000 as a source of revenue from the Residential Field Charge, the overall rate structure approved by the PUC would still have collected the same \$600,000 – the only difference being that the \$600,000 would have been included in a higher base rate. Unfortunately, the October 10, 2003 Commission Order reduced PGW's approved rate structure by \$600,000 – by eliminating PGW's ability to collect this charge for field activity which it still must undertake (and for which it is still incurring costs). If the PUC maintains its disallowance of the Residential Field Charge, it must permit PGW to raise its base rates in order to provide the previously PUC approved revenue requirement that included the \$600,000. Essentially, by disallowing the Residential Field Charge, the Commission has ignored the mandate that the unbundling of rates must have a revenue neutral effect and not create a revenue deficiency as it has done in this case.²⁰⁹

Even if the Commission were to look to the "costs" associated with these field activities, the OCA/Action Alliance claims overlook the testimony of Mr. Gyory who testified that the

[residential field charge] covers the cost associated with pre-termination (and, therefore, pre-restoration collection activities in the field collection unit which is staffed by approximately 40 field collectors. In addition to the field collector's salaries, there are transportation costs and overhead incurred by this unit.²¹⁰

Thus, PGW did show that the charge is needed to cover costs that the Company incurs. Significantly, not one witness challenged this testimony during the hearing. Furthermore, this charge is also supported by the fact that PGW's pre-restructuring Gas Service Tariff also contained a provision for the \$10 Residential Field Charge.

The OCA also wrongly asserts that the "Company has not explained how much of its costs would need to be recovered by the fee, nor has the Company demonstrated that the costs of termination visits are not recovered through other expense allowances in its base rates." As discussed above, rate structure and demonstrations of costs were previously litigated in the 2002

²⁰⁹ "[T]his section shall not prevent the Commission from approving changes in rates payable by any class of ratepayers . . . so long as the revenue requirement and the overall rates and charges are not adversely affected by such changes." 66 Pa. C.S. § 2212(e).

²¹⁰ PGW St. CP-1 at 15.

Base Rate Case. In light of the foregoing, the OCA's assertion lacks merit because PGW has already demonstrated that it incurs costs for these activities and the costs associated with the Residential Field Charge activity are (in part) recovered in the charge authorized in the 2002 Base Rate Case.

The OCA and Action Alliance continue to incorrectly infer that the Residential Field Charge cannot be imposed because it is not mentioned in Chapter 56. This inference is invalid because Chapter 56 contains neither a general nor a specific provision that excludes all charges not mentioned in Chapter 56. Additionally, this argument fails for the reasons discussed above - the Residential Field Charge is part of PGW's PUC-approved rate structure.

The inclusion of the Residential Field Charge in PGW's approved rate structure further defeats Action Alliance's argument that late payment charges as, defined by the Bureau of Consumer Services, include the "cost of collections." Late payment charges were authorized by the Commission in that same case and, again ratepayers were given credit for the revenue collected from this service.²¹¹ Also further defeated is Action Alliance's related argument that PGW is recovering for the cost of collections a second time for the expenses already covered by the late payment charge. PGW's revenue requirement in its 2002 Base Rate Case included both pro-forma late payment charges and pro-forma Residential Field Charges. As stated above, if the Residential Field Charges were not included, base rates would have been set higher to compensate PGW for the demonstrated need for an additional \$600,000 regardless of how late payment charges are defined.

Finally, Action Alliance maintains that the scope of when the Residential Field Charge can be applied to a field visit is broader than permitted in the pre-Restructuring Gas Service Tariff. While this fact is not necessarily relevant to how the PUC should structure this charge, PGW alternatively proposes that if the Commission re-instates the Residential Field Charge, the Company will limit the imposition of the charge to only two field visits after each general notice provision has been provided to the customer pursuant to 52 Pa. Code §56.91.

²¹¹ PGW St. CP-1 at 15.

2. Liens and Judgments

The OCA continues to assert that PGW's tariff proposal should be rejected because the PUC can not enforce them.²¹² As the Commission stated in its Compliance Tariff Order: "PGW should collect lien and judgment amounts through the legal process, and thus this provision shall be deleted from the tariff."²¹³ Collecting liens and judgments through the legal process will result in customers losing their homes or personal property. As a matter of public policy, PGW has not sought to foreclose on the homes of residential customers nor pursued the seizure and sheriff sale of personal property. If PGW were to execute on its liens and judgments filed for 2002 and 2003 alone, tens of thousands of homeowners would lose their homes and an equally large number of residents would lose their personal property. In order to avoid such a drastic measure and save the onerous cost of execution, PGW is simply seeking a payment arrangement as a condition of service restoration after the termination of service. Ironically, it is PGW's position that is most protective of consumer's interest, not the position of the OCA, because PGW's position permits customers to remain in their residence or keep their personal property. PGW is now beginning to move more aggressively with regard to liens and judgments related to commercial and industrial customers and may foreclose on their properties if necessary. Such a course would be the inevitable result for residential customers as well if the PUC adopts the OCA position. Indeed, Action Alliance actually supports the PGW position in this instance presumably for this reason.²¹⁴

The OCA also misinterpreted the facts and holdings of its two cited cases: *Gasparro v. Pa. P.U.C.*²¹⁵ and *Strowder v. Philadelphia Gas Works*.²¹⁶ In *Gasparro*, a property owner ("Gasparro") initially filed a PUC Complaint against PECO alleging that PECO's failure to read

²¹² OCA MB at 52.

²¹³ *Compliance Tariffs of Philadelphia Gas Works in response to the Commission Restructuring Order as Modified on Reconsideration*, Docket No. M-00021612, Order (Oct. 10, 2003).

²¹⁴ AA MB at 43.

²¹⁵ 814 A.2d 1282, 1284 (Pa. Cmwlth. Ct. 2003).

²¹⁶ Docket No. C-20028036, 2002 WL 32069511, at *2 (Pa. P.U.C. Dec. 30, 2002).

Gasparro's meter for four years resulted in inflated electric bills.²¹⁷ The relief that Gasparro requested from the PUC was "to order PECO to take an actual meter reading and, if it showed that [Gasparro] owed PECO any money, to set up a payment plan."²¹⁸ Of the \$7,194.49 in dispute, PECO had obtained a civil judgment against Gasparro in the amount of \$6,902.77 in Philadelphia Municipal Court four years before the filing of the PUC Complaint.²¹⁹ In their Main Brief, OCA improperly narrows the *Gasparro* holding, when it must be read in its entirety:

Gasparro's complaint that PECO's charges were based on estimated readings rather than actual readings should have been raised with the PUC *prior* to the entry of the default judgment. [footnote omitted] If Gasparro had raised these claims prior to the entry of the judgment in the amount of \$6,902.97, then the PUC could have reviewed the underlying facts [footnote omitted] to determine whether over-billing occurred. [citation omitted] At this point, however, PECO is moving to collect on its judgment, an issue over which the PUC does not have jurisdiction.²²⁰

The foregoing facts and holding demonstrates that the OCA's inference is absolutely incorrect (i.e. that Commonwealth case law restricts PGW from voluntarily accepting a payment plan as a condition of service to collect on a lien or judgment). Rather, *Gasparro* holds that when an amount is in dispute that is subject to a judgment and the judgment-holding utility is moving to collect the judgment, a PUC complainant/ratepayer cannot properly contest the judgment amount in a PUC proceeding because the Commission lacks subject matter jurisdiction to *force* a different result.²²¹ All the case law holds that the PUC cannot require a payment

²¹⁷ *Gasparro* at 1284.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.* at 1285.

²²¹ On page 54 of the OCA's Main Brief, it cites *Strowder v. Philadelphia Gas Works*, Docket No. C-20028036, 2002 WL 32069511, at *2 (Pa. P.U.C. Dec. 30, 2002) to support its claim that that PGW cannot use the Commission process to collect on a lien or judgment. In *Strowder*, under circumstances similar to *Gasparro*, the PUC complainant disputed that the lien amount of \$8,207.44 by asserting that the amount represents gas service that she never received. *Strowder* at 2-3. Based on the nature of the dispute (i.e. about the validity of the lien amount), the Commission affirmed the ALJ's decision that the dispute raised in the Complaint does not involve a law, regulation, or Order that the commission has jurisdiction to administer. *Id.*

arrangement for an unpaid judgment or lien.²²² But PGW is voluntarily agreeing to be bound by the PUC rules – a completely different situation. PGW is simply seeking to collect its liens and judgments in order to avoid the home foreclosures, the seizing of personal property, and sheriff sales and the costs associated therewith. PGW is not using PUC process to collect these debts, though.

As explained above, neither Commonwealth Court nor PUC precedent prohibit PGW from agreeing to permit an applicant to enter a payment arrangement for lien and judgment amounts as a condition of service restoration. Further, such arrangements are valid as long as the arrangement comports with the requirements of 52 Pa. Code 56.35. In fact, although the PUC cannot reconcile disputes concerning the amount of a lien or judgment, it certainly has jurisdiction over the staleness of a debt that PGW may require a residential customer to pay (via payment arrangement) before the restoration of terminated gas service regardless of whether the debt is subject to a lien or judgment. For this reason, PGW is agreeable to modifying the language of Tariff Section 2.4.C.6 in order to specifically apply the requirements of 52 Pa. Code 56.35 even though a general application exists in its current tariff.²²³

Finally, the OCA has alternatively recommended (if the Commission should permit PGW to apply the provisions of Tariff Section 2.4.C.6.) that PGW “should be directed to develop and

²²² *Ford v. Duquesne Light Company*, 1995 Pa. PUC LEXIS 49, ** 10-17. This precedent is based on the fact that the Commission lacks jurisdiction over a civil judgment, and, thus, a PUC requirement that the utility enter into a payment plan with a former customer to pay off the judgment would actually violate the utility’s rights to exercise its civil remedies. *Id.*; *Accord, Homol v. Columbia Gas of Pennsylvania, Inc.*, 1992 Pa. PUC LEXIS 104, *5 (BCS decision requiring the utility to accept a payment plan for past-due utility charges for a person who is no longer a customer would interfere with Columbia’s right to pursue a civil action for the collection of the debt).

²²³ The version of 2.4.C.6. proposed in the restructuring compliance tariff is as follows:

2.4.C.6. The Applicant fails to enter into a payment agreement for an outstanding lien or judgment of record in favor of PGW and against the Applicant.

PGW offers the following modified version with the modifications noted in brackets []:

2.4.C.6. The Applicant fails to enter into a payment agreement for [the amount of] an outstanding lien or judgment of record in favor of PGW and against the Applicant [which accrued within the past four years].

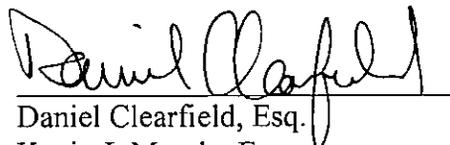
submit a plan or procedures as to how it will coordinate its collections through a payment arrangement with the civil court in order to track reduction in the outstanding judgment or lien amount and final satisfaction of the lien or judgment.”²²⁴ PGW has already developed procedures and provided these procedures to the parties. PGW would be willing to submit these data for the record as part of the compliance filing. Ultimately, though, this is of little relevance as a judgment or lien remains unchanged in amount, as a legal matter, until it is paid in full or otherwise satisfied.

²²⁴ OCA Main Brief at 54.

VII. CONCLUSION

For the reasons stated above and in PGW's Main Brief, the arguments raised by the opposing parties that are inconsistent with PGW's positions should be rejected.

Respectfully submitted,



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Dated: July 23, 2004

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
	:	
v.	:	R-00049157
	:	
Philadelphia Gas Works	:	
	:	
	:	
	:	
Petition of Philadelphia Gas Works to Establish a	:	P-00042090
Cash Receipts Reconciliation Clause	:	

PETITION FOR RECONSIDERATION OF PHILADELPHIA GAS WORKS

Philadelphia Gas Works ("PGW" or "the Company") respectfully submits this Petition, pursuant to 52 Pa. Code § 5.572, requesting that the Pennsylvania Public Utility Commission ("Commission" or "PUC") reconsider its Opinion and Order in this case denying PGW any relief in its petition for an automatic mechanism to adjust collections for PGW's cash receipts shortfall (the "CRRC") and, based upon the new developments described below, either permit the CRRC to go into effect or, alternatively, order expedited consideration without ALJ recommended decision of PGW's Chapter 56 Waiver Petition.

In its Opinion and Order, entered July 8, 2004, the Commission summarily rejected any relief proposed either by PGW or the Office of Trial Staff ("OTS") apparently on the basis of what PGW believes was a misunderstanding of the financial evidence presented in the record. Additionally, recent events which were not before the Commission when it considered the CRRC show that PGW's situation has worsened and provide additional bases for concluding that the CRRC is necessary as part of a comprehensive effort to stabilize PGW's financial condition and forestall a further bond downgrade to junk status. Not before the Commission when it decided the CRRC petition is the fact that PGW has only been able to insure about \$25-50 million of its

contemplated \$150 million bond issuance, and, in fact, may not be able to insure any of it, and will have to scale back the issuance to \$125 million. Also, a new negative statement from Standard and Poor's ("S&P") on the Company's outlook further points up the potential for downgrade if the Company is not authorized to take some action to improve its collections and cash working capital in the short term. Moreover, PGW's most recent projection of its end-of-year cash shows an even more disturbing picture than that which was before the Commission when it made its CRRC ruling. Without consideration of a one-time gas storage payment deferral arrangement, PGW would end the year with negative \$6.5 million in year end liquidity.¹ Taken together, the apparent misunderstanding of the evidence and the changed circumstances compel a reconsideration and revision of the Commission's CRRC Order.

Alternatively, if the Commission elects not to reconsider and reverse its prior decision, PGW requests that the Commission certify the record in the Chapter 56 Waiver Petition (currently before an ALJ for recommended decision)² directly to the Commission for an expedited decision pursuant to 66 Pa. C.S. § 335(a). PGW previously sought Commission consideration of its Waiver Petition, concurrently with its CRRC request, on the basis that such prompt relief was needed to satisfy the financial community, that it had a viable means of improving its collections in the short term, and to enable PGW to implement the proposed waivers and achieve the anticipated collections results in the time period expected of it.

¹ As set forth below, the effect of this payment deferral is to delay PGW's obligation to pay for gas injected into storage. Payment will not be made during this fiscal year, but will be made during the winter period when PGW's revenue from gas sales has increased. Without such deferral, PGW's cash would be inadequate to meet expenses during the fall and early winter.

² Docketed at P-00042117.

Since PGW made that request (which the PUC declined to adopt), the financial community, through both its statements and actions, has reiterated its negative outlook for the Company and reinforced the threats of a further downgrade to junk status. Moreover, should PGW have to sell its bond without insurance, the cost to customers would increase by approximately \$2 million per year after reducing the total amount of the issuance. Should another downgrade occur, the cost to customers would be far greater, and it is much more likely that the bond sale would not occur at all. If no bond sale is possible, or if the amount of the sale is substantially reduced, there will be a further direct impact on PGW's cash flow as well as a threat to the Company's ability to carry out its capital program which is designed to address safety and reliability of the PGW system.

At present, the only avenues available to meet the expectations of the investment community are either to implement the CRRC, implement PGW's requested Chapter 56 waiver petition, or implement both proposals. As Commission action on the waiver request is not now expected until September 30, 2004, absent reconsideration of the CRRC Order, certifying the Chapter 56 waiver petition directly to the Commission for decision would at least move up the waiver decision and give the Company more opportunity to put the new collections tools in place prior to this coming winter thus directly addressing the concerns articulated by the financial community. Additionally, should the Commission deny PGW's waiver request, an earlier decision may enable the Company to institute its option of last resort, a base rate case with a request for extraordinary rate relief, in a timeframe that could possibly avoid the assured downgrade to junk status.

In further support of its Petition for Reconsideration, PGW avers as follows:

1. The fundamental conclusion of the Commission in its CRRC Order, which serves as the foundation for the remainder of the determinations in the Order, is that PGW failed to satisfy its burden of proof in showing that its financial condition was so precarious as to warrant the unique ratemaking relief requested.³ As a result, the Order reasoned that a departure from perceived Pennsylvania ratemaking law and principles was not justified.⁴

2. Given the new actions by the financial community, the apparent misunderstanding of the record in this proceeding by the Commission, and the new evidence of PGW's present financial condition, this Petition plainly satisfies the Commission's standard for reconsideration.

That standard is clear:

[P]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.⁵

The Commonwealth Court has similarly described the Commission's standard for approaching reconsideration: "[I]n deciding whether to deny reconsideration, the Commission considers whether the petitioner has presented new evidence, *changed circumstances*, or previously unconsidered law."⁶

³ Order at 8-11.

⁴ Order at 11.

⁵ *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. PUC 553, 559 (1982) (emphasis added); *Pa. PUC v. Jackson Sewer Corp.*, 2001 Pa. PUC LEXIS 44, *6 (same).

⁶ *J.A.M. Cab Company, Inc., v. Pa. PUC*, 572 A.2d 1317, 1318 (Pa. Cmwlth. 1990) (emphasis added).

3. PGW's request satisfies this standard in multiple ways. First, as explained in detail below, the Commission appears to have misunderstood record evidence in reaching its fundamental conclusion that PGW somehow failed to meet its burden of proof as to its financial condition and that its "financial outlook is not as desperate as it seemed."⁷ Second, an update of that evidence, reflecting PGW's current liquidity position, as well as recent actions by bond insurers, and one of PGW's principal bond rating agencies serve to provide compelling additional evidence of the Company's financial crisis⁸ and constitute changed circumstances justifying reconsideration.

I. PGW Met its Burden of Proof and Its Financial Condition Justifies the CRRC.

4. As noted, the Commission concluded that PGW failed to carry its burden of proving that its financial condition was sufficiently poor to warrant any special action at this time.⁹ In reaching this determination, the Commission pointed to PGW's end of year cash projections of \$31-\$36 million, achieved as result of the City of Philadelphia's waiver of the \$18 million per year City Payment and the two-year deferral of PGW's payback of the \$45 million line of credit.¹⁰ Additionally, the Commission also took special note of PGW's efforts to finalize a \$53.4 million natural gas storage payment deferral arrangement, which, at that time,

⁷ Order at 11.

⁸ Consolidated Proceeding, PGW St. CP-1R at 2; PGW M.B. at Appendix A.

⁹ Order at 11.

¹⁰ Order at 10. The Commission also curiously cited to Fitch's recognition of this aid from the City as evidence of anticipated cash flow improvement. *Id.* But, the Commission failed to quote Fitch's next sentence which found PGW wanting *despite the City's help*: "None of these positive steps were sufficient to stave off the current downgrades." PGW St. CRRC-5, Exh. TEK-2.

was anticipated to defer \$30 million in gas payments beyond August 31, 2004.¹¹ The Commission's Order clearly envisioned the \$30 million in gas storage payment deferral as an additional cash flow benefit beyond the Company's end-of-year cash projections, produced by the City's largesse which would increase PGW's end-of-year cash to some \$60 million.

5. However, the Commission appears to have made a fundamental and serious miscalculation of PGW's financial condition. The \$31 to \$36 million figure that the Commission cites is not primarily the result of the City grant-back and loan deferral. Rather, the \$31 to \$36 million end-of-year cash figure is primarily and substantially the result of PGW's already accounted-for deferral of gas storage payment obligation (\$30 million of which was then projected to affect PGW's cash flow by August 31, 2004). In other words, the Commission's understanding that PGW will have \$31 to \$36 million in liquidity (i.e., cash and available short-term borrowing) at fiscal year end plus an additional \$30 million because of the deferral is fundamentally incorrect.

6. When the gas storage deferral is properly removed from consideration, PGW's true cash position, based upon the evidence that was before the PUC when it made its decision falls to virtually zero for fiscal year end 2004. As PGW's Mr. Bogdonavage testified during the hearings, PGW needs the availability of cash in the fall and early winter period to pay operating expenses and to continue gas purchases during that period when customer billings and revenues are still low, prior to the onset of cold weather and associated higher customer gas billings and receipts.¹² Accounting for the City's grant back of the \$18 million City payment, the

¹¹ Order at 10-11.

¹² PGW St. CRRC-1 at 7.

Company's end of year liquidity had the potential to reach \$1-\$6 million.¹³ Thus, the \$30 million derived from the deferral of the gas storage payments – which must be paid in FY 2005 (which begins in a little over one month) – is necessary to achieve the \$31-\$36 million figure relied upon by the Commission in its finding regarding PGW's financial condition.

7. When considering the financial position of the Company, it is necessary to exclude the effects of the gas storage deferral arrangement because the transaction is a one-time arrangement which merely transfers PGW's payment obligation for injecting natural gas into its storage facilities from the end of FY 2004 to the winter of 2005, creating no additional cash working capital of any kind¹⁴ and there is no assurance that PGW will be able to replicate a gas payment deferral arrangement in FY 2005.¹⁵

8. Moreover, an update of those projections in the CRRC record as reflected in the verified statement of Joseph Bogdonavage (attached as Appendix "A"), shows that these figures actually overstate PGW's likely end of year cash position. Even considering the effect of the gas storage deferral, PGW projects that its end of year cash (including the City Payment waiver) will be just \$28 million.¹⁶ With the one time gas storage deferral arrangement backed out, PGW's permanent cash working capital would be a negative \$6.5 million.¹⁷

¹³ CRRC Proceeding, PGW Rejoinder Exh. 1 (JRB); Tr. 311-12.

¹⁴ CRRC Proceeding, Tr. 311-13; 348-49; App. A, hereto.

¹⁵ Appendix "A" hereto, Bogdonavage Ver. St., ¶ 3.

¹⁶ See, App. A, Attach. 1, p. 1. The gas storage payment deferral is now projected to defer \$34.5 million in payments from end of year FY 2004 into the winter of FY 2005. App. A, ¶ 1(a).

¹⁷ App. A, Attach. 1, p. 2.

9. These figures obviously do not prove PGW's financial health. Instead, they conclusively disprove it. This, in fact, is why PGW is on the brink of being downgraded to junk status. Accordingly, the Commission, by virtue of the \$30 million error and these updated facts must reconsider its conclusion .

10. Importantly, these cash projections already take account of the improvement to historic levels in PGW's collections that the Company expects to experience in FY 2004. In the rebuttal testimony of PGW's Randall Gyory, presented in the Consolidated Proceeding, Mr. Gyory updated PGW's collections efforts, testifying that the Company will probably end the fiscal year at about its historic collections' rate of 92%.¹⁸ Notwithstanding this collections level (and assuming the additional cash resulting from the City 's waiver of the City Payment), as the attached cash flow analysis shows, PGW's end of year cash will still be under \$30 million and substantially negative if the effects of the gas storage deferral arrangement are removed.

II. Recent Actions by the Financial Community Further Warrant Reconsideration or Clarification.

11. Changed circumstances, prompted by the recent actions of the financial community, also demonstrate that the Company's financial condition is on the brink of a downgrade to junk bond status and, specifically, that the Commission's conclusion that PGW's financial situation would not harm its access to the financial markets for its planned issuance of \$125 to \$150 million in new bonds is erroneous.¹⁹ As Mr. Gyory related in the Consolidated

¹⁸ *Investigation into Financial and Collections Issues Regarding the Philadelphia Gas Works*, Docket Nos. P-00042090; R-00049157; M-00021612; and P-00032061 ("Consolidated Proceeding"). The Commission is empowered to take administrative notice of these proceedings. *See Level 3 Communications v. Marianna & Scenery Hill Telephone Co.*, 2002 Pa. PUC LEXIS 50 (2003). PGW Statement CP-1R at 6.

¹⁹ Order at 9.

Proceeding, PGW believed at that time that its planned bond issuance this fall would only be insured at the AAA level to \$50 million at most.

12. Indeed, PGW's most recent information is that it will likely only be able to insure approximately \$25-50 million, well short of the \$150 million that PGW needs, and may not be able to obtain insurance for any of it.²⁰ As a result, PGW projects that, as a consequence, it will be forced to reduce the issuance to just \$125 million and to issue the remaining \$100 million in bonds at its current BBB- rating (one level above junk status).²¹ If it issues the full \$125 million, the resulting financing costs will be in the area of \$40 million higher than a totally insured issuance (over the next 20 years).²² Of course, this extra financing expense will fall squarely on the shoulders of PGW's customers.

13. Additionally, since the Commission's issuance of its CRRC Order, S&P has released a new Bulletin reemphasizing PGW's current negative financial outlook and reaffirming its warnings of further downgrades:

Standard & Poor's Ratings Services said that the Pennsylvania Public Utilities Commission's (PUC) decision yesterday to reject Philadelphia Gas Works' (PGW) request to establish a special surcharge to help defray the cost of its uncollectible billings is another unfavorable development for PGW's credit quality. The investment-grade rating on PGW's senior revenue bonds (BBB-/Negative) remains tenuous. Still, the PUC's decision in and of itself does not have an immediate impact on the ratings on PGW. However, it highlights the difficulty of PGW's financial situation, which could lead to lower ratings in the near term. The ratings on PGW have historically benefited from a supportive relationship with the PUC. The PUC's recent decision points to the potential for a less supportive relationship going forward. Should the regulatory environment affect the company's ability to access

²⁰ App. A, ¶ 4.

²¹ *Id.*

²² Consolidated Proceeding, PGW Statement No. CP-1R at 2.

short-term or long-term financing or lead to gas suppliers placing additional liquidity demands on PGW, the ratings could be lowered. High debt levels, slim financial margins, and weak collection rates that are exacerbated by high gas prices remain the primary drivers for the company. The outlook on PGW is negative.²³

14. These developments prove that PGW's financial crisis is severe and that the current facts are worse than judged to be the case by this Commission in its Order of July 8, 2004 and warrant the Commission's reconsideration and reversal of its decision. The bond rating agencies and insurers understand that PGW is financially strapped, and clearly the CRRC will allay their concerns and help to stabilize the Company's financial position by providing a backstop to insure minimum levels of collections and corresponding cash working capital.

III. None of the Other Stated Legal or Policy Concerns Raised By the Commission Warrant Rejection of the CRRC.

15. Nothing in Pennsylvania law or established ratemaking principles preclude the reconsideration of the Commission's decision and the implementation of the CRRC to address PGW's pressing financial concerns. The CRRC Order, itself, acknowledges that single issue ratemaking is permitted under Section 1307 of the Code.²⁴ Nor would the prohibition against retroactive ratemaking affect more than the Company's attempt to address the cash receipts shortfall from the current fiscal year in its requested "e-factor."²⁵

²³ S&P Bulletin: "Adverse Regulatory Decision For Philadelphia Gas Works Detracts From Credit Quality," July 9, 2004 (Attached as Appendix B hereto).

²⁴ Order at 13.

²⁵ PGW does not concede the correctness of the retroactive ratemaking conclusion as to the current shortfalls. While the Commission stated that uncollectible expense matters are typically considered in a base rate case (Order at 14), and that these expenses are not unanticipated because they are provided for through a specific uncollectible accounts allowance in base rates (Order at 16), both assertions miss the mark under these circumstances. The fact that uncollectible expense matters are typically addressed in base rate cases, or that they are so anticipated and ever-present that they have their own

16. The Commission also rejected PGW's petition in part on its findings that the CRRC would *place the burden from non-paying gas customers on paying customers*,²⁶ and that it would require customers with good payment records to bear some financial risk that PGW might mismanage collections efforts (although no mismanagement was found),²⁷ thereby resulting in rates that were not just and reasonable. But, such results are part of ratemaking. All paying utility customers (and customers of any business, for that matter) must pay a portion of the costs attributable to non-paying customers and with it bear the risk that not all utility collection efforts will be as successful as desired. There is nothing new or unusual here -- it is the very reason for the existence of uncollectible expense accounts, and the traditional allowance for utilities to recover the cost of non-payers in rates.²⁸

17. The fact that uncollectibles expenses must be recovered from paying customers totally supports, not negates, PGW's CRRC Petition. Ultimately, all customers who can pay should be required to pay, and PGW is seeking Chapter 56 waivers to enhance the efficacy of its

recognized category in base rates, proves nothing concerning the recoverable nature of these expenses as sought by PGW. Reduced to its simplest statement, the Commission's ruling is that uncollectible expenses cannot be considered "unanticipated" or "extraordinary" because they in fact exist, and are specifically allowed as a category of base rates. By this reasoning, however, no expense is ever unanticipated or extraordinary, and therefore no expense recovery above that already included in base rates ever should have been allowed by the Commission or upheld in Pennsylvania courts. Yet, Pennsylvania law often has allowed just that. PGW CRRC M.B. at 29-38. Mere foreseeability of costs, and allowance in base rate cases generally, raises no bar to recovery through other, tailored mechanisms, and to suggest otherwise requires reversal of a large and distinct body of law.

²⁶ Order at 24, 25.

²⁷ Order at 15, 19.

²⁸ In fact, both OCA witness LeLash (Tr. at 441) and OSBA witness Knecht (OSBA St. 1 at 2) agreed that provision for uncollectible expense was a normal part of utility base ratemaking.

collections procedures in order to find a way to produce the material cash improvement demanded by S&P and reduce the burden on customers with good payment records. The simple fact that PGW must recover its uncollectibles expense through paying customers, though, is no evidence that resulting rates will be unjust or unreasonable, and the Commission should reconsider its conclusion on this point. Even if the Commission holds to its determination that these ratemaking principles impede the establishment of the CRRC, they all devolve from Chapter 13 of the Public Utility Code, and the Company's financial condition warrants a departure from and, if necessary, waiver of the same.²⁹

18. Finally, there should be no factual issues as to the calculation of the surcharge preventing reconsideration. The Commission raised a concern over potential ambiguity regarding the effect of the \$36 million "black box" settlement in the last rate case in that it did not specify the effect of the settlement on PGW's previously authorized \$55.7 million uncollectibles account expense.³⁰ However, this concern is easily resolved. The testimony in this proceeding made clear that the most the \$36 million could do was add another \$2.7 million to the \$55.7 million figure, raising it to \$58.4 million.³¹ The Commission certainly can factor that amount into the cash receipts reconciliation equation and fashion the appropriate relief.

IV. The OTS Proposal Should Have Been Accepted Absent the CRRC.

19. The Commission also rejects the OTS proposal for many of the same reasons it used to deny PGW's Petition.³² The Commission does not and could not reject the primary

²⁹ 66 Pa. C.S. § 2212(c).

³⁰ Order at 19.

³¹ CRRC Proceeding, Tr. at 422; PGW St. CRRC-1R at 10.

³² Order at 24.

reason underlying the OTS proposal: that the cash flow method of regulation does not adequately protect PGW from undercollections of uncollectible expense associated with high gas costs.³³ For this reason, the Commission should reconsider its decision and adopt a modified OTS proposal should it continue to refuse to adopt the CRRC.³⁴

20. The Commission has an opportunity to rectify this imbalance, and should do so on reconsideration. Should the Commission fail to rectify this situation, it would in essence be taking PGW's property in violation of due process of law.

V. In the Alternative, The PUC Should Certify PGW's Chapter 56 Waiver Requests for Direct and Expedited Commission Decision.

21. At the very least, the recent negative actions and statements of the financial community require certification of PGW's Waiver Petition directly to the Commission for its adjudication. As the Commission is aware, the Company initially sought a July 8, 2004, decision date for its Petition. Also, PGW did not oppose a request by the OCA to dispose of the ALJ's Recommended Decision in the Commission's Consolidated Proceeding, of which the waiver request is a part. The PUC denied both requests. The limitations placed on the Company's access to the capital markets, the new Bulletin by S&P forecasting more financial trouble for the

³³ CRRC Proceeding, OTS St. 1 at 9-13. Obviously, since the same mechanism causes both PGW's current and expected future cash undercollections, (Tr. at 418), the OTS proposal should be modified to permit recovery of current undercollections as well.

³⁴ As OTS proved, and no party disputed, PGW as a cash-flow regulated company will automatically suffer from cash undercollections when its gas cost rate ("GCR") exceeds the GCR used in the last fully litigated base rate case. This operates as a simple fact of mathematics, and through no fault on the part of PGW. PGW will always be under-compensated for uncollectibles expense in this instance, which will negatively impact its cash flow. This is a unique characteristic of a cash-flow regulated company, and calls for a flexible approach to ensure that PGW is not denied funds to which it is entitled.

Company, and the upcoming evaluation by Moody's³⁵ all warrant prompt and direct action by the Commission on PGW's requested waivers – the only remaining mechanism under consideration by the PUC for achieving material improvement in PGW's collections and cash margins in the near term as required by the rating agencies.³⁶

22. It is very important that such expedited ruling on the Chapter 56 waivers occur by mid-August for two reasons. First, Moody's will issue its report on PGW in early September. The Commission support for the waivers could be significant in averting their downgrade. Second, the earlier the waivers are adopted, the more likely will be the success of PGW's collections effort prior to winter.

23. PGW has contacted the parties to the Consolidated Proceeding and Action Alliance et. al., and the OCA have authorized PGW to indicate that they do not oppose PGW's request that the Commission expedite the decision on PGW's Chapter 56 Waiver Petition by issuing an order bypassing the recommended decision process (as it did with the CRRC), and certifying the record, on the Chapter 56 Waiver Petition to it. These parties are expressing their non-opposition only to that portion of PGW's reconsideration petition having to do with expediting the decision on PGW's Chapter 56 Waiver petition and do not join in any other portion of PGW's Petition for Reconsideration.

³⁵ On June 8, 2004, Moody's indicated that it will review the Company's condition and ratings within 90 days. Moody's Investors Service Global Credit Research Rating Update – PGW (June 8, 2004). www.moodys.com/moodys/cust/research/genoa/report/rating%20Update8062. PGW CRRC M.B. at 5. This 90 day period is set to expire on approximately September 6, 2004.

³⁶ Consolidated Proceeding, PGW M.B. at 12-21.

WHEREFORE, Philadelphia Gas Works respectfully requests that, for the reasons stated herein, this Commission should reconsider its decision in this case and approve the CRRC. Alternatively, should it decline to reconsider its CRRC Order, the Commission should expedite the decision on PGW's Chapter 56 Waiver Petition by issuing an order bypassing the recommended decision process (as it did with the CRRC), certifying the record on the Chapter 56 Waiver to it, and issuing a favorable ruling as quickly as possible. (The remaining issues raised by the Commission in its June 2, 2004, consolidation order may still be the subject of a recommended decision).

Respectfully submitted



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Dated: July 22, 2004

APPENDIX A

APPENDIX A

VERIFIED STATEMENT OF JOSEPH BOGDONAVAGE

I, Joseph R. Bogdonavage hereby state as follows:

1. Based upon available actual data and estimates and projections for the remainder of FY 2004 (12 months ending August 31, 2004), PGW will have \$28 million in total available liquidity (cash and available short term borrowing) at year end (Attachment 1, p. 1) which already reflects the impact of the following steps taken by PGW to improve liquidity:

a) The current projected effect of the natural gas storage payment deferral transaction with one of PGW's natural gas suppliers. PGW is projecting that this transaction will defer \$34.5 million of gas purchases into FY 2005. If the natural gas storage deferral transaction had not occurred, PGW would have ended the year with negative \$6.5 million in available liquidity.

(i) The natural gas storage payment deferral transaction does not create additional cash working capital -- it merely delays PGW's payment obligation into FY 2005, thereby adding to PGW's cash working capital needs at that time.

b) The waiver by the City of the \$18 million dollar annual payment.

c) The deferral by the City of repayment of the \$45 million city loan.

2. Current projections of year-end cash available -- the \$28 million cited above -- show potential for a severe cash shortfall and could delay the timely payment of obligations as they become due. Such a cash shortfall could make it difficult for PGW to purchase gas to supply our customers during the cold weather period.

3. There is no basis for assuming that PGW will be able to successfully negotiate a natural gas storage payment deferral transaction for FY 2005 or thereafter.

4. PGW's most recent information is that it will be able to insure only approximately \$25-50 million of its contemplated bond issuance this fall, well short of the \$150 million that PGW had originally planned, and it may not be able to obtain insurance for any of the issuance. PGW projects that, as a consequence, it will be forced to reduce the issuance to just \$125 million and to issue the non-insured bonds at its current BBB- rating (one level above junk status). If it issues the full \$125 million, the resulting financing costs will be in the area of \$40 million higher than a totally insured issuance (over the next 20 years).

VERIFICATION

I, Joseph R. Bogdonavage, hereby verify that I am Senior Vice President of Finance for the Philadelphia Gas Works and that I am authorized to make this verification on behalf of the Philadelphia Gas Works, and that the information contained in the foregoing Verified Statement is true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties relating to unsworn falsification to authorities as prescribed by 18 Pa. C.S. § 4904.

Dated: July 22, 2004


Joseph R. Bogdonavage

APPENDIX B



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BULLETIN: Adverse Regulatory Decision for Philadelphia Gas Works Detracts From Credit Quality

Jeanny Silva, New York (1) 212-438-1776

NEW YORK (Standard & Poor's) July 9, 2004--Standard & Poor's Ratings Services said that the Pennsylvania Public Utilities Commission's (PUC) decision yesterday to reject Philadelphia Gas Works' (PGW) request to establish a special surcharge to help defray the cost of its uncollectible billings is another unfavorable development for PGW's credit quality. The investment-grade rating on PGW's senior revenue bonds (BBB-/Negative) remains tenuous. Still, the PUC's decision in and of itself does not have an immediate impact on the ratings on PGW. However, it highlights the difficulty of PGW's financial situation, which could lead to lower ratings in the near term. The ratings on PGW have historically benefited from a supportive relationship with the PUC. The PUC's recent

decision points to the potential for a less supportive relationship going forward. Should the regulatory environment affect the company's ability to access short-term or long-term financing or lead to gas suppliers placing additional liquidity demands on PGW, the ratings could be lowered. High debt levels, slim financial margins, and weak collection rates that are exacerbated by high gas prices remain the primary drivers for the company. The outlook on PGW is negative.

For a complete list of ratings, please click the hyperlink provided here

<http://www2.standardandpoors.com/NASApp/cs/ContentServer?pagename=sp/Page/FixedIncomeRatingActionsPa>

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CERTIFICATE OF SERVICE

I hereby certify that I have on this day, served a true copy of the foregoing document of Philadelphia Gas Works' upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

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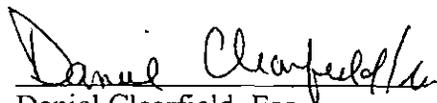
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